

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.1572 OF 2022**

Wasim Yusuf Shaikh .. Applicant

Versus

The State of Maharashtra .. Respondent

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Mr.Kuldeep Patil for the Applicant.

Mr.S.V.Gavand, A.P.P. for the State/Respondent.

PSI Shri Rasal attached to Kurla Police Station, present.

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CORAM: BHARATI DANGRE, J.

DATED : 17th JUNE, 2022

P.C:-

1. The two CRs came to be registered with Kurla Police Station, in respect of the same incident, which is alleged to have taken place on 02/01/2022 at 3.30 p.m., giving two distinct versions.

2. The CR in which the applicant is apprehending his arrest, is registered as C.R.No.04 of 2022 which invokes Sections 326, 452, 454, 380, 427, 323, 504, 506, 141, 143, 147, 149 of the Indian Penal Code.

The said C.R. came to be registered on the complaint filed by Irbaz Khan, who has alleged that while he was present in his house, one Rahima Shaikh, residing in the same society on the ground floor, and one Umer Shaikh visited him and questioned him as to why he was knocking the door of their house in the night. This lead to verbal altercation and subsequently got converted into a free fight.

The complainant alleged that the accused persons, including the present applicant broke the door of the house with the aid of rod, stones, sword, which they were holding in their hands and forcibly gained entry into the house. The applicant is alleged to have assaulted the complainant by hands alongwith Nadeem and Umer. Nadeem is stated to have given a blow of iron rod on his right hand. A lot of commotion was created on the spot and it is alleged that the complainant was pulled out of his house, his clothes were torn and he was assaulted by the persons named. He was brought to the police station by Nadeem and referred for medical treatment.

3. Another C.R. is registered at the instance of Rahima Shaikh, a woman who is alleged to have visited the house of the complainant and she has given another version. She has stated that she complained Irbaz Khan about the leakage in his house and told that they should carry out the repairs to deal with the problem, instead of causing any nuisance. She allege that Irbaz assaulted her with bamboo and caused injury. It is also alleged that Munira, wife of Irbaz, also abused her. Her son Wasim and Umer were injured in the incident and were taken to the hospital.

4. Injury certificate of Irbaz, complainant in the first C.R. which invokes Section 326 alongwith other Sections, is placed before me by the learned A.P.P.. The injury certificate which treated him as an outdoor patient on 02/01/2021, refers to abrasion, friction, scratches, bruises and one contusion over temporal region of scalp. All the injuries are classified as simple injuries. The injury certificate of Munira, the other victim, refers to nail scratches over left forearm.

5. The prosecution has invoked Section 326 of the I.P.C.. However, the learned A.P.P. Mr.Gavand states that no injury which would invoke Section 326 has featured from any document and the complainant's injury certificate does not reveal any grievous injury. *Prima facie*, the invocation of Section 326 of I.P.C. cannot be sustained.

6. It is apparent that cross FIRs came to be lodged on account of hostility between the members of the society on account of some leakage problem. Since, the primary offence against the applicant is now restricted to Section 323 alongwith the other offences under the I.P.C., his custodial interrogation is not warranted. Even according to the complainant, he was assaulted by the applicant by hands and has not put to use any weapon, which would result into grievous injury. Hence, the following order.

: ORDER :

- (a) Application is allowed.
- (b) In the event of arrest in connection with C.R.No.04 of 2022 registered with Kurla Police Station, applicant-Wasim Yusuf Shaikh shall be released on bail on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.
- (c) The applicant shall report to the concerned police station on every Thursday and Friday between 2.00 p.m. to 5.00 p.m. for a period of two weeks and, thereafter, as and when called for.
- (d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and should not tamper with evidence.

(SMT. BHARATI DANGRE, J.)