

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 2754 OF 2021

1. Hussain Ilyas Sumbaniya
2. Mr. Mhd. Rafiq Yusuf Shaikh Applicants

Versus

The State of Maharashtra Respondent

Mr. Rabindra Kumar Yadav for Applicants.

Mr. Makarand G. Patil, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 06th JANUARY, 2022
(through Video Conferencing)

P.C. :

1. The Applicants are seeking anticipatory bail in connection with C.R.No. 838 of 2021 registered at Waliv Police Station, on 15/08/2021, under sections 354, 141, 143, 504 and 506 of the Indian Penal Code (for short 'IPC').

2. Heard Shri. Rabindra Kumar Yadav, learned counsel for the applicants and Shri. Makarand Patil, learned APP for the State.

3. The First Information Report (for short 'F.I.R.') is lodged by one Suhana Shaikh on 15/08/2021. She has stated that,

she was in business of construction. She had a land at Naigaon (E). One Satnam Singh was constructing building on that particular land. Ownership of the informant was 68% and remaining 32% was kept with Satnam Singh. However, there was dispute between both of them since past one year of lodging of F.I.R.

4. On 14/08/2021, at about 5.00p.m. watchman Guddu Yadav of that building made a telephone call to the informant and told her that, Satnam Singh along with 5 to 10 persons was trying to enter the building forcibly. The informant thereafter immediately rushed to the spot after informing the police. When she went there, she saw Satnam Singh, his younger son and both the applicants along with 10 to 12 persons were trying to break open the lock of a flat and were trying to enter that flat. When the informant resisted, she was abused. It is alleged that, both the applicants held her hand for pushing her out of the building, when she resisted, the applicant Hussain touched her inappropriately and bit on her shoulder. He also uttered derogatory words. By that time the police came near the building and thereafter all of them ran away.

5. Learned counsel for the applicants submitted that the informant was constantly making false allegations against the applicants. The applicant No.1 Hussain had, in fact, given a complaint in the month of April i.e. on 24/04/2021 to the police officers expressing his apprehension that the informant was likely to involve him in a false case. That complaint is annexed to this application at Exhibit 'E'. He submitted that the story is false and there is no supporting evidence.

6. Learned APP produced investigation papers before me. He relied on the statement of eye witness Guddu Yadav which purportedly supports the informant's case. He, however, stated that the informant was not sent for medical examination and, therefore, there was no evidence whether she was bit on her shoulder. He further admitted that no police officers had reached the spot at the time of incident, as alleged in the F.I.R.

7. I have considered these submissions. As pointed out by learned counsel for the applicant, the applicant had already expressed his apprehension against the applicant by way of application before the police. There is previous enmity between

the parties. The main accused Satnam Singh is already granted anticipatory bail. So far as allegations in the F.I.R. are concerned, they purportedly supported by version of Guddu Yadav, Watchman. I have perused that statement. This statement is not very clear. It does not appear that it was recorded in his own words. Besides that, said witness was a Watchman employed by the informant herself. There are no other independent witnesses to the incident. The investigation was going on since August 2021 and the investigating agency does not have any cogent evidence supporting the version of the first informant. As pointed out earlier, there is no medical report supporting informant's version that the applicant No.1 had bit her on shoulder. Similarly, her version that police officers reached at the spot is not supported by the investigating agency. In any case, there is a possibility that the applicants are falsely implicated. Therefore, though there are some antecedents against the applicant No.1, considering the overall weak nature of evidence against the applicants, their custodial interrogation will not be justified. They can be protected by an order of anticipatory bail.

8. Hence, the following order :

ORDER

- (i) In the event of their arrest in connection with C.R.No. 838 of 2021 registered at Waliv Police Station, the applicants are directed to be released on bail on their furnishing P. R. bonds in the sum of Rs.30,000/- each (Rupees Thirty Thousand each Only) with one or two sureties each in the like amount.
- (ii) Both the applicants shall attend the concerned police station once in every week for a period of three months from today and shall co-operate with the investigation. In addition, both the Applicants shall attend the concerned Police Station as and when called and shall cooperate with the investigation.
- (iii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)