

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

ANTICIPATORY BAIL APPLICATION NO. 798 OF 2023

SADIK S/O SHABBIR QURESHI AND OTHERS
VERSUS
THE SUPERINTENDENT OF POLICE JALNA AND ANOTHER

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Advocate for Applicants : Mr. More P. P.
APP for Respondents : Mrs. G.L. Deshpande

CORAM : R.M. JOSHI, J.
DATE : 12th June, 2023

PER COURT :

1. At the outset, counsel for applicants states that the application against applicant nos. 1 to 3 has become infructuous. Hence, application is dismissed as withdrawn qua applicant nos. 1 to 3.

2. Applicant no. 4 apprehending arrest in connection with FIR No. 137 of 2023 registered with Badnapur Police Station on 13th April, 2023, at 23:19 hours for the offences punishable under Sections 143, 147, 148, 149, 307, 325, 324, 323, 336, 452 of IPC.

3. It is alleged by the informant that an incident occurred on 12th April, 2023, in which abuse and assault took place on him and in that regard he lodged complaint in police station. In this connection, Sadik Qureshi came in the front of the

house of informant and threatened that he will call his relatives on the next date. When he informed about this to his uncle Bashu Sayyad, he told him that tomorrow he will take steps for the settlement and hence, informant went back home. It is further alleged that on 13th April, 2023, at about 10:00 a.m. applicants came along with others came to the spot with sticks, iron rod, knife, gupti in their hands others and they assaulted informant and others.

4. Learned counsel for the applicants states that there are no allegations against the applicant no. 4 of causing the actual assault on informant or any other relevant injured person. According to him, in respect of the same incident the FIR is lodged by the side of applicant before police. He submits that since the applicant has not used any weapon, his custodial interrogation is not necessary.

5. Learned APP opposed the said submission particularly referring to the statement of the driver of the vehicle in which the accused had gone to the spot of the incident. It is submitted that as per the statement of driver, the vehicle was arranged by this applicant and in view of the fact that in the said vehicle weapons were carried by the accused applicant needs to be equally held responsible for the assault caused. He, therefore, has aided and

abetted the other accused for causing assault on injured. It is submitted that custodial interrogation of the applicant is necessary.

6. Perusal of the record indicates that in respect of the incident dated 13th April, 2023, counter crimes were recorded vide CR No. 136 of 2023, registered at 22.03 hours and Crime No. 137 of 2023, registered 23:19 hours. The record further shows that persons from both sides sustained injuries. In fact the record indicates that the applicant herein also sustained injuries. Surprisingly, however, there is no allegation against him that he was holding any weapon or has caused assault on any one. Thus, there is no evidence to show any overt act of applicant in causing any actual assault on injured. Merely because he was present at spot or he had arranged vehicle would not sufficient to reject his application. Because, the first information report lodged in this case also indicates that both sides were intending to settle the dispute which occurred on 12th April, 2023. The Investigation papers further indicates that all weapons were recovered from the spot. This also shows that it is the case of free-fight between the two groups. Absence of overt act of applicant indicates that he could be at spot to reconcile dispute.

7. In such circumstances, when there are no other

allegations against the applicant of using any weapon or causing any assault to any of the injured person, and also in view of the fact that there are no criminal antecedents against the applicant, it is the fit case to protect his liberty. Nothing is to be recovered from him. The applicant no. 4 can be directed to appear before the Investigation Officer and co-operate for further effective investigation, if remains. Hence, The application is allowed in terms of interim order dated 18th May, 2023.

[R.M. JOSHI, J.]

SPChauhan