

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

ANTICIPATORY BAIL APPLICATION NO. 1064 OF 2023

1. Ali Husain Kudrat Ali Shaikh
Age : 52 Years, Occupation : Business
2. Sayra Ali Husain Shaikh
Age : 48 Years, Occupation : Housewife
Both Residing at :-

B-07, Ground Floor, A1-Ashraf
Apartment, Nevri Pada, Kausa,
Mumbra, Dist. Thane : 400612.

...Applicants

vs.

State of Maharashtra
[At the instance of Sr.P.I. of Mumbra
Police Station vide C.R. No.276 of 2023]

...Respondent

Neville D. Deboo a/w Tasleem F. Shaikh – Advocates for Applicants.
Mr.N.B.Patil – APP for the Respondent-State.
Mr.Dhananjay Chavan – API – Mumbra Police Station.

CORAM : S. M. MODAK, J.

DATE : 2nd MAY, 2023

P. C. :-

1. Heard learned Advocate for the Applicants and learned APP for the Respondent-State. Officer is present.

2. There is allegation that these Applicants are the husband and wife and they have assisted the main Accused – Mehfuj Ali Husain Shaikh in committing the crime. FIR is lodged by Shrimati Rehmat Wasim Shaikh. Alia is her daughter. She married with main Accused No.1 – Mehfuj. Both are not staying together. Alia is staying with her mother.

3. On 15th March, 2023, the incident took place at about 8.30 p.m., in front of the house of the First-Informant. Her husband is one Wasim Shaikh. When he was standing outside the house, he was assaulted by his own son-in-law Mehfuj Shaikh and the said Mehfuj beat him with fist and blows. When his daughter Alia tried to intervene in the quarrel, other Accused/Applicant Sayra Shaikh who is the younger brother of Mehfuj has assaulted the First-Informant with the help of sharp razor weapon. When Vasim Shaikh tried to intervene, the said Sayra also assaulted him with the same weapon. So also, Mehfuj had thrown one block towards Alia – daughter of the First-Informant. When that quarrel was going on, the present two Applicants along with other came there and they have also beaten the members of the First-Informant with fist and blows and abused them.

5. When they applied for anticipatory bail before Sessions Court, it was rejected by the Court of Additional Sessions Judge – Thane for the reason that they have assisted the main Accused and earlier, there was an offence under Section 307 of Indian Penal Code, 1860 [“IPC”] against them.

6. When the allegations in FIR are perused, there is no allegation that these two Applicants have used any weapon. Only allegation is that they came at the spot after the main Accused assaulted the Prosecution witnesses with sharp razor weapon. There is contention that these Applicants cannot be booked for the offence under Section 307 of IPC. This is not the stage to decide the said issue and it can be agitated before the trial Court.

7. The FIR is registered with Mumbra Police Station on 16th March, 2023 and an offence under Sections 307, 326, 354, 323, 504, 141, 143, 145, 147, 148, 149 of IPC read with Sections 37(1) and 135 of Maharashtra Police Act, 1951 is registered.

8. Considering the fact that except abuses and beating with fist and blows, there is no such allegation which requires custodial interrogation. Hence, they have made out a case for anticipatory bail. Even though it may be true that there is earlier offence under

Section 307 of IPC, Court has to consider in a given case whether custodial interrogation is required.

9. In view of that, following order is passed :-

O R D E R

- (i) In case of arrest in connection with C.R.No. 276 of 2023 registered at Mumbra Police Station – Thane for the offences punishable under Sections 307, 326, 354, 323, 504, 141, 143, 145, 147, 148, 149 of IPC read with Sections 37(1) and 135 of Maharashtra Police Act, the Applicants be released on furnishing personal bond and surety bond of Rs.25,000/- each.
- (ii) Applicants not to threaten the Prosecution witnesses or to allure them in any manner.
- (iii) Applicants to give attendance to Mumbra Police Station – Thane on Tuesday every month from 10.00 to 12.00 noon till filing of charge-sheet.

10. It is made clear that the observations made herein are prima facie, and the trial Court shall decide the case on its own merits, in accordance with the law, uninfluenced by the observations made in this order.

11. Application is disposed of in the aforesaid terms.

12. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]