

Sayali Upasani

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

ANTICIPATORY BAIL APPLICATION NO. 1598 OF 2023

Mohammad Usman Sagir Khan And Anr. ...Applicants
Versus
State of Maharashtra and Others ...Respondents

**WITH
ANTICIPATORY BAIL APPLICATION NO. 1546 OF 2023**

Numan Sagir Khan ...Applicant
Versus
State of Maharashtra and Others ...Respondents

Mr. S.K. Ali i/b A. A. Sidhdhiqui, for Applicants.

Mr. M. G. Patil, APP for State.

Mr. Ganesh Gupta with Mr. Jamal Khan Mr. Sahil
Ghorpade, for Respondent No. 2

Mr. Sonne, PSI, Naupada Police Station, Present.

CORAM:- N. J. JAMADAR, J.

DATED:- 27th SEPTEMBER, 2023

ORDER:-

1) These applications are preferred for pre-arrest bail in connection with C.R. No. 145 of 2023, registered with Naupada Police Station, Thane, for an offence punishable under Section

394 read with Section 34 of Indian Penal Code, 1860 (“the Penal Code”).

2) The native place of the first informant and the applicants is in the State of Uttar Pradesh. A dispute had arisen between the first informant and the applicants while they were at their native place prior to one and half years of the alleged occurrence. In the wake of the dispute, the first informant had lodged a report at Sultanpur, Uttar Pradesh. Likewise Mohammad Usman Sagir Khan, the applicant No. 1, had lodged a report against the first informant and his associates.

3) The first informant alleged that on 15th May, 2013, while he was below the flyover at Tinhath Naka, TMC Garden, the applicants accosted him. Applicant No. 1 Usman Khan was armed with an iron rod. Applicant No. 2 Ruman (Numan) Khan and Applicant No. 3 Irfan Khan were armed with wooden sticks. Applicant No. 2 Ruman (Numan) and applicant No. 3 Irfan allegedly caught hold of the first informant and accused No. 1 Usman divested the first informant of a mobile phone handset of I-phone 11 make and cash amount of Rs.47,000/-. The first informant claimed to have rushed to the nearest police station and thereafter he was brought to Pinnacle hospital, where he lodged the report.

4) Apprehending arrest, the applicants approached the Court of Session. As the learned Sessions Judge declined to exercise the discretion in favour of the applicants, they have approached this Court.

5) I have heard Mr. S.K. Ali, the learned Counsel for the applicants and Mr. M.G. Patil, the learned APP for the State and Mr. Ganesh Gupta, the learned Counsel for the first informant - respondent No. 2. Mr. Ali, the learned Counsel for the applicants would submit that on account of previous enmity, the applicants had been falsely implicated in respect of an occurrence in which, in fact, the applicant No. 3 Irfan was brutally assaulted by the first informant and his associates. Attention of the Court was invited to the FIR lodged by applicant No. 1 at Sultanpur police station and the medical certificate evidencing the examination of the applicant No. 3 Irfan at Rajawadi Hospital. Mr. Ali also referred to the complaint dated 17th May, 2023 addressed on behalf of the applicant No. 1 alleging assault by the first informant and his associates.

6) It was further submitted that without prejudice to the rights and contentions of the applicants, to show their bonafide, the applicants have already deposited the

amount of Rs.47,000/- of which the first informant was allegedly robbed. The applicants have also co-operated with the investigation and appeared before the Investigating Officer in terms of the order dated 12th June, 2023, and, therefore, at this stage, the interim order deserves to be made absolute.

7) Mr. Patil, the learned APP, however, resisted the prayer for pre-arrest bail. It was submitted that the applicants have been specifically named and there are witnesses who have stated about the assault perpetrated by the applicants and the robbery of cash and mobile phone handset. Custodial interrogation of the applicants is, therefore, warranted to facilitate the recovery of the mobile phone handset and the weapons of assault.

8) Mr. Gupta supplemented the submissions of learned APP. It was urged that as the first informant had suffered grievous hurt, on account of the assault perpetrated by the applicants, the offence punishable under Section 397 of the Penal Code, which entails a minimum punishment of seven years imprisonment, can be said to have been made out. Mr. Gupta further submitted that the applicants do not deserve the exercise of discretion as their antecedents indicate that they

have been indulging in violent acts habitually, especially the applicant No. 3 Irfan.

9) An endeavour was made to draw home the point that after the grant of interim protection, the accused No. 3 Irfan has threatened the first informant with dire consequences, by uploading a photo of the first informant in an injured condition on Facebook.

10) Mr. Ali joined the issue by submitting that, in fact, the said photo had been uploaded at the instance of the first informant by making a fake profile of applicant No. 3 so as to put hindrances in the grant of relief to the applicants.

11) While granting interim protection to the applicants on 12th June, 2023, this Court noted the enmity between the parties and the fact that the accused No. 3 Irfan claimed to have suffered injuries in the course of the very same occurrence. It was further noted that the applicants had volunteered to deposit a sum of Rs.47,000/- without prejudice to their rights and contentions.

12) Prima facie, it appears that the enmity between the first informant and the applicants which began at their native place has traveled with them. The first informant as well as the

applicant No. 1 have lodged reports at Sultanpur. This inimical nature of the relationship deserves to be kept in this view.

13) Prima facie, the first informant has named the applicants as the assailants and has attributed a specific role to each of the applicants. Injury certificate also lends prima facie support to the claim of the first informant. However, it appears that the genesis of the occurrence has not been disclosed. The medical certificate issued by Rajawadi Hospital indicates that on the very day of the occurrence, multiple injuries were found on the person of applicant No. 3 Irfan. He had narrated the history of assault by 4 to 5 known persons. Prima facie, there is no explanation for injuries on the person of Irfan, in the prosecution version.

14) Mr. Gupta attempted to explain the said fact by asserting that applicant No. 3 Irfan having known the first informant ought to have disclosed the names of the assailants. The absence of the names of the first informant and his alleged associates renders the medical certificate unworthy of credence.

15) At this juncture, I find it difficult to accede to this submission. Prima facie, it seems that in the very same occurrence, applicant No. 3 Irfan had also sustained multiple

injuries. Applicant No. 3 had addressed the complaint to the superior police officers on 17th May, 2023, alleging assault by the first informant and his associates.

16) The situation which thus obtains is that ex-facie there are two versions of one and the same occurrence. It appears, prima facie, that the members of both the groups sustained injuries in the said occurrence. The applicants have been granted interim protection, and they have attended the police station. To facilitate further investigation, at this length of time, the custodial interrogation of the applicants for the purpose of recovery of the alleged weapons does not seem warranted.

17) It was further submitted on behalf of the prosecution and the first informant that the antecedents of the applicants disentitle them from the relief of the pre-arrest bail. One N.C complaint seems to have been registered against the applicant No. 1 Usman and applicant No. 2 Ruman (Numan). One N.C. complaint and two crimes have been registered against applicant No. 3 for the offences punishable under Section 392 read with Section 34 and Sections 384 and 504 of the Penal Code, respectively, in the years 2018 and 2021.

18) In the backdrop of the nature of the accusation and, especially, the fact that the relations between the parties

appear to be inimical, the aforesaid antecedents do not constitute an impediment in exercising the discretion in favour of the applicants. The apprehension on the part of the prosecution can be taken care of by imposing conditions.

19) For the foregoing reasons, I am inclined to exercise the discretion in favour of the applicants and make the order of interim bail absolute.

20) Hence, the following order.

ORDER

I) The order of interim bail dated 12th June, 2023 is made absolute.

II) The applicants shall co-operate with the investigation and attend Naupada Police Station, Thane, on every alternate Saturday in between 10.00 am to 1.00 pm for a period of two months or till filing charge-sheet, whichever is earlier.

III) The applicants shall not tamper with the prosecution evidence and/or give threat or inducement to the first informant or any of the persons acquainted with the facts of the case.

IV) The applicants shall not enter the limits of Taloja, where the first informant resides for a period of one year from today.

V) The applicants shall furnish their permanent address and contact details to the Investigating Officer within a period of one week from today and keep him informed about any change therein.

VI) The applicants shall regularly attend the proceedings before the jurisdictional Court.

VII) In the event of breach of any of the aforesaid conditions, the prosecution shall be at liberty to move for cancellation of bail.

VIII) It is clarified that these *prima facie* observations are confined to determine the entitlement to pre-arrest bail only.

(IX) The amount of Rs.47,000/- deposited by the applicants be transferred to the Judicial Magistrate First Class, Thane, dealing with the cases arising from Naupada police station. The learned JMFC, in turn, shall deposit the amount in an interest bearing account. The amount so deposited shall abide

the final decision of case arising out of CR No.145 of 2023.

X) The application stands disposed.

[N. J. JAMADAR, J.]