

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

ANTICIPATORY BAIL APPLICATION NO. 1639 OF 2023

Subhash Dattu Mali	...Applicant
vs.	
The State of Maharashtra	...Respondent

Mr. Kabul Singh Labana - Advocate for the Applicant
Mr.H. J. Dedhia - APP for the Respondent-State

CORAM : S. M. MODAK, J.

DATE : 15th JUNE, 2023

P. C. :-

1. Heard learned Advocate for the Applicant and learned APP. Officer is present.
2. Even though the incident took place on 15/06/2022, the F.I.R. is registered on 01/10/2022. So there is a delay. Learned APP invited my attention to the paragraph no. 2 of the F.I.R., it refers to filing of the complaint to the Joint Commissioner of Police and Assistant Commissioner of Police on 25/09/2022 and 21/09/2022. They were filed by the first informant-Pradip Patil and one Akhtar Nasir Shaikh, but even admittedly they were not filed immediately.
3. There are in all five accused person and present

Applicant is accused no. 4-Subhash. Already charge-sheet is filed against arrested accused persons. It is annexed to this application.

4. It seems that the incident of assault took place and accused named in the F.I.R. have obstructed the work of digging. It is carried out for the purpose of erection of tin partition. The accused came on the spot in the Wagon-R Car and they have assaulted with the help of various weapons like hockey sticks, iron rods and choppers swords. The present Applicant was alleged to be possessed the hockey stick.

5. The medical certificate is at page no. 62 and page no. 63 issued by the C.S.M. Hospital Kalwa, Thane. It is for the injuries caused to the first informant-Pradeep Patil and Aktar Hussain Nasir Ahmed, all injuries are simple injuries. There is a contention that how offence under Section 326 of the Indian Penal Code can be invoked.

6. Even though it may be true that there is an allegation of the use of hockey stick by the present Applicant, I do not think that purpose of the investigation to seize the hockey stick will be served even if the Applicant will be interrogated by taking into custody because already sufficient period has elapsed.

7. It seems that learned trial Judge has taken rigid view by observing that an offence is serious and weapons are yet to be recovered. My attention is invited to the submission recorded in para no. 1 of the order dated 13/03/2023 passed by the Court of Additional Session Judge, Thane. It records that the injuries caused to the first informant-Pradip Patil and Aktar Hussain Nasir Ahmed are simple in nature and therefore, Section 326 is not applicable. However he has not paid attention to the facts narrated above and in fact then he ought to have granted anticipatory bail to this Applicant. This Court cannot overlook the submissions made today.

Hence I am inclined to grant an anticipatory bail. Hence the following Order:-

ORDER

- (i) Anticipatory bail application is allowed.
- (ii) In case of arrest in connection with C.R. No. 283 of 2022 registered with Shil Daighar Police Station for the offence punishable under Sections 326, 147, 148, 149, 504 of the Indian Penal Code, the Applicant be released on furnishing Personal Bond and Surety Bond in sum of Rs. 25,000/-.
- (iii) Applicant is directed to give attendance to the Shil Daighar Police Station, Thane on 21st and 28th July from

10.00 a.m. to 12.00 noon.

- (iii) Copy of this Order be sent to the learned Additional Sessions Judge, Thane for information.

8. It is made clear that the these are my *prima-facie* observations and the trial Court shall decide the case on its own merits without influenced by the observations made in this order.

9. Application is disposed of in the aforesaid terms.

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

[S. M. MODAK, J.]