

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

ANTICIPATORY BAIL APPLICATION NO. 1693 OF 2023

Mustafa Mahabbul Ansari	... Applicant
v/s.	
The State of Maharashtra	 Respondent

Ms. Misbaah Solkar a/w. Somaiya Khan i/b.
Mr. Amin Solkar for the Applicant.
Ms. A.A. Takalkar, APP for the State.
Mr. S.D. Patil, PSI, Shivaji Nagar Police Station, present.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 04th JULY, 2023.

P.C. :-

1. The Applicant apprehends his arrest in C.R.No.953/2021 registered with Shivaji Nagar Police Station, Mumbai for offences punishable under sections 302, 323, 427 r/w. 34 of the Indian Penal Code and sections 37(1)(a) and 135 of Maharashtra Police Act.

2. Heard learned counsel for the Applicant and learned APP for the State. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

3. The FIR and the other material on record prima facie reveal that on 07/11/2021, the co-accused Aftab stabbed a knife in the abdomen of Mannan, the brother of the first informant and caused his death.

The allegations against the Applicant are that he had instigated said Aftab to commit murder of deceased – Mannan. In this regard, the witness – Shahanawaz Ansari claims that on 06/11/2021, while he was near Mohammadiya Masjid, he heard Aftab telling the Applicant – Mustafa that Mannan needs to be eliminated. He states that when the Applicant asked him the reason for elimination, the co-accused told him that Mannan wanted to be the president of rickshaw stand. He states that the Applicant had told Aftab to kill Mannan in the event he interferes. Whereas, the witness – Mohammad Ansari claims that on 06/11/2021, he had called the Applicant – Mustafa telling the co-accused to kill Mannan.

4. Prima facie, there is no consistency in the statement of these two witnesses which were recorded on 10/12/2021 and 17/11/2021. The FIR indicates that there was an altercation between Mannan and the co-accused – Tausif over payment of loan of Rs.10,000/-. The FIR does not prima facie indicate that the Applicant was present near Masjid on 06/11/2021 and that he was involved in instigating the co-accused. It is stated that investigation has been completed. Hence, the presence of the Applicant is not required for custodial interrogation. Considering the nature of the accusations against the Applicant and the material in

support thereof, in my considered view, this is a fit case to exercise discretion under section 438 of Cr.P.C. Hence, the Application is allowed on the following terms and conditions :-

(a) In the event of arrest of the Applicant in C.R.No.953/2021 registered with Shivaji Nagar Police Station, Mumbai, he shall be released on bail on furnishing bail bonds in the sum of Rs. 40,000/- with one or two sureties in the like amount ;

(b) The Applicant shall report to the Investigating Officer as and when required ;

(c) The Applicant shall not interfere with the complainant and the other prosecution witnesses and shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case in any manner ;

(d) The Applicant shall keep the Investigating Officer informed of his current address and mobile contact numbers, and/or change of residence or mobile details, if any, from time to time.

5. The Application stands disposed of.

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Date: 2023.07.07
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(SMT. ANUJA PRABHUDESSAI, J.)