

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.1715 OF 2023**

Afsar Fateh Khan

...Applicant

vs.

State of Maharashtra

...Respondent

Mr. Ammar Nizami for the Applicant.

Mr. S. R. Agarkar APP for the Respondent-State.

Mr. Jagannath Shinde, PSI, Tilak Nagar police station present.

CORAM : S. M. MODAK, J.

DATED : 26TH JUNE 2023

P.C. :

1. Heard learned Advocate for the Applicant and learned APP for the Respondent-State.

2. Two persons are named in the FIR. They are present Applicant-accused No.1 and his wife Ayesha Khan-accused No.2. The first informant is one Nazma Gulam Sayed. Her sister Nasreen Khan was assaulted by the Applicant and his wife. Nasreen Khan was slapped by the present Applicant and his wife. It was on account of parking of two wheeler. When the first informant tried to intervene,

both the accused threatened her not to intervene. During spur of moment present Applicant brought one plastic pipe and gave blow on the head of the first informant-Nazma. The blood started oozing. The neighbours have separated them. Thereafter FIR is lodged with Tilak Nagar police station, Dombivli on 11th April 2023, initially under section 323, 504 read with 34 of IPC. Later on, it was revealed that there is medical certificate issued by Shastri Nagar hospital for the first informant-Nazma and there was lacerated wound over scalp. Furthermore, there is injury to witness-Nausheen Khan. It is also issued by same hospital. On the basis of this, offence is converted under section 326 of IPC.

3. It is submitted that the **weapon is seized from the spot** and there is panchnama dated 11th April 2023. **It mentions that plastic pipe was seized.**

4. I read the the order passed by learned Additional Sessions Judge, Kalyan dated 27th April 2023. Co-accused-Ayasha Khan was granted anticipatory bail, however, benefit of parity was not granted to the Applicant. Considering the role, I do not have any opinion different from the opinion expressed by the learned Additional Sessions Judge.

5. Furthermore, co-accused was granted anticipatory bail, as she was a woman and pregnant. The order further says that the weapon is yet to be recovered. It seems that this finding is **factually incorrect**, in view of spot panchnama shown to me.

6. So let learned Additional Sessions Judge be cautious while dealing with Anticipatory Bail Applications. Certainly, they can inquire with the Investigating Officer and learned APP whether the weapon is recovered or not. Even they are justified in perusing papers.

7. One cannot forget the fact that District Courts are overloaded with files and work. Still we have the responsibility. This Court never meant to criticize Learned Judge but while discharging judicial function, due to oversight or overburden, few facts are overlooked. So this is an attempt to bring it to the notice of Learned Additional Session Judge, Kalyan so that in future precaution can be taken.

8. Hence, the case for grant of anticipatory bail is made out and the following order is passed :

O R D E R

- (a) In the event of arrest, in connection with C.R. No.I-77 of 2023, registered with Tilak Nagar police station, Dombivli for the offences punishable under sections 323, 324, 326, 504 read with 34 of IPC, the Applicant-Afsar Fateh Khan be released on bail on furnishing personal bond and surety bond of Rs.15,000/-.
- (b) The Applicant shall cooperate with police as and when required.
- (d) Needless to say, violating of the condition above will make the Applicant liable for cancellation of anticipatory bail, after notice to the Applicant.
- 4. Application is disposed of accordingly.
- 5. These are my prima facie observations and the trial Court may not be influenced by that.
- 6. Copy of this order be sent to learned Additional Sessions Judge,Kalyan for information.
- 7. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]