

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

ANTICIPATORY BAIL APPLICATION NO. 1782 OF 2023

1. Aasim Sikandar Malvi
2. Shri Saqlain Aasim Malvi ...Applicants
vs.
The State of Maharashtra ...Respondent

Mr. Ashwin Kumar Deore a/w Mr. Jay Patil - Advocate for the Applicant

Mr. S. R. Agarkar - APP for the Respondent-State
Sonawane – Wada Police Station

CORAM : S. M. MODAK, J.

DATE : 20th JULY, 2023

P. C. :-

1. Heard learned Advocate for the Applicant and learned APP. The investigating officer from Wada Police Station is present.
2. The Court of the Additional Sessions Judge, Thane has rejected their anticipatory bail application for the reason that the recovery of the weapons has to be made.
3. Learned APP pointed out to me the following materials:-
 - (a) The involvement of the Applicant No. 2-Saqlain and he bet the first informant with the help of iron rod on his head.
 - (b) The involvement of the Applicant No. 1-Aasim and

he bet the first informant with wooden stick on his back.

- (c) The statements of other eye witnesses showing the same involvement.
- (d) Certificate issued by the Primary Health Centre Kudus dated 20/03/2023. There was one injury on forehead having three stitches and right arm is fractured.
- (e) There is certificate issued by the private Navjeevan Hospital dated 23/03/2023. There are three injuries out of them injury to forearm is grievous. Whereas there are simple injuries on shoulder and forearm.

4. Learned Advocate for the Applicant tried to explain the manner in which the accident took place. The first informant has parked his truck in front of the gate of Actual Company on 19/03/2023, when he went to the site on the next date i.e. 20/03/2023, the Applicant No. 1- Aasim came there and started throwing stone towards the truck. The truck was parked in the premises of the one Asalam Bhure.

5. The first informant was about to go to Asalam Bhure for lodging the complaint at that time, both these Applicants assaulted him with rod and stick. Initially, an offence is registered under

Sections 324, 323, 504 read with 34 of the Indian Penal Code.
However, later on Section 326 of the Indian Penal Code was added
on the basis of the certificate issued by Navjeevan Hospital. They
have added the fracture to the forearm as grievous injury.

6. When I have perused both these medical certificates, there is no injury on forehead shown in the Navjeevan Certificate (which is shown by the Kudus hospital). This is not the stage to go into the issue whether one material corroborates with another material and whether the oral testimonies is corroborated by the medical evidence. It is contended that the fracture to the forearm does not fall within the meaning of Section 320 of the Indian Penal Code as punishable under Section 326 of the Indian Penal Code. It is true that just because fracture to the forearm and just because Doctor has mentioned injury as grievous the Police have applied Section 326 of the Indian Penal Code. No doubt it is on the basis of the medical opinion, if that Section is not there, it is case for anticipatory bail. Now the Police wants to recover those weapons. Except that there are no other grounds.

7. Considering the manner in which the incident took place and considering the fact that Kudus hospital has not described the

injury as grievous, I think that purpose of the investigation can be served even by giving attendance to the Police Station. So I am inclined to grant anticipatory bail. Hence Order:-

ORDER

- (i) Anticipatory bail application is allowed.
- (ii) In case of arrest in connection with C.R. No. 109 of 2023 registered with Wada Police Station, District Palghar for the offence punishable under Sections 326, 324, 323, 504 read with 34 of the Indian Penal Code, the Applicant No. 1-Aasim Sikandar Malvi and Applicant No. 2-Saqlain Aasim Malvi be released on furnishing Personal Bond and Surety Bond in sum of Rs. 25,000/-.
- (iii) Both are directed to give attendance to Wada Police Station on 02nd and 04th Thursday from 03.00 p.m. to 05.00 p.m. till filing of the charge-sheet.
- (iv) Applicant shall not threaten the prosecution witnesses.

8. It is made clear that the these are my *prima facie* observations.

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.]