



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.2345 OF 2023**

Altamash Aurangzeb Khan	...	Applicant
versus		
The State of Maharashtra	...	Respondent
WITH		
INTERIM APPLICATION NO.3016 OF 2023		
Mohammed Yakub Mohammed	...	Applicant/Intervener
and		
Altamash Aurangzeb Khan	...	Applicant
versus		
The State of Maharashtra	...	Respondent

Mr. Nilesh Gala with Mr. Tutwij Solanki i/by Law Square, for Applicant.
Mr. M.G.Patil, APP for State.
Mr. Aamir Koadia with Ms. Saki Shaikh, for Intervener.
Mr. Bahhav, PSI Dongri Police Station, present

CORAM: N.J.JAMADAR, J.

DATE : 30 AUGUST 2023

P.C.

1. Heard the learned Counsel for the parties.
2. This is an application for pre-arrest bail in connection with C.R.No.154 of 2023 registered with Dongri Police Station for the offences punishable under Sections 326, 323, 504, 506 read with Section 34 of the Indian Penal Code, 1860.
3. Mr. Mohammed Yakub, the first informant is the uncle of the applicant. The first informant and his brother Aurangzeb Khan, co-accused No.1, are at loggerheads over a shop premises No.4/8 situated at Fazul Building, Jail Road,

Dongri, which stood in the name of their deceased mother. There have been disputes between the first informant and his family, on the one part, and his brother Aurangzeb and his family members, on the other part.

4. On 29 July 2023, when the first informant and his son Fazzal had been to the said shop, the applicant Altamash, co-accused Shahabaz and one of their friend were standing thereat. When the first informant asked them to make way, the applicant and co-accused started to abuse him. Aurangzeb Khan also came thereat. While hurling abuses, the applicant brought an iron road and unleashed blows by means of iron road on the head, hands and legs of the first informant. Aurangzeb caught hold of him. Co-accused Shahabaz assaulted him by means of fists. As the first informant sustained bleeding injury, the applicant fled away. Co-accused Aurangzeb and Shahabaz were released on bail by the learned Magistrate.

5. Apprehending arrest, the applicant approached the court of Session. The learned Additional Sessions Judge declined to exercise the discretion in favour of the applicant. Hence, this application.

6. I have heard Mr. Gala, learned Counsel for the Applicant, Mr. Patil, learned APP for the State and Mr. Aamir Koradia, learned Counsel for the Intervener-first informant.

7. The learned Counsel for the Applicant submitted that the informant party had barged into the premises in the possession of the applicant and his family

members with a view to forcibly dispossess them. One of the sons of the first informant was armed with a deadly weapon. In fact, the members of the informant party had assaulted the applicant, and he had lodged a complaint about the said incident. The learned Counsel further submitted that the offence punishable under Section 326 is not prima facie made out as the injury certificate would indicate that the first informant has sustained CLW on the scalp. Referring to the previous dispute and the enmity between the parties, the learned Counsel for the Applicant submitted that the applicant deserves exercise of discretion.

8. As against this, the learned APP submitted that a specific role has been attributed to the applicant. Injury certificate corroborates the version of the first informant. Since the weapon of offence is yet to be recovered, custodial interrogation of the applicant is warranted.

9. The learned Counsel for the First informant submitted that there is material in the form of CCTV footage to show that the applicant was armed with iron rod. In the face of the injury certificate, which categorically records that the first informant had sustained grievous injury on head, it cannot be urged that the offence punishable under Section 326 is not prima facie made out. He further submitted that the contention on behalf of the applicant that the informant party had barged into dispossessing the applicant and his family members and one of the sons of the first informant was armed with a sharp weapon has been urged to wriggle out of the

situation.

10. As is evident, the genesis of the offences is in the dispute between the first informant and his brother, over the shop premises. The material on record prima facie indicates that few of the members of both the parties were armed with instruments. It further appears that in the incident, which unfolded, members of both the groups sustained injuries. Prima facie it appears to be a case of free fight between the members of the two groups. The allegations in the FIR are required to be considered in the aforesaid backdrop.

11. Indeed, there are allegations that the applicant was armed with iron road and unleashed blows on the first informant, including the one on his head. The injury certificate indicates that 'CLW on the scalp' was designated grievous. The aspect as to whether the said CLW would qualify as grievous hurt, would be a matter for adjudication. All the offences, except offence punishable under Section 326, are bailable. The applicability of the provisions contained in Section 326 of the IPC, prima facie, appears to be debatable.

12. Viewed from the aforesaid perspective, the custodial interrogation of the applicant does not seem to be warranted. The Applicant also appears to have a fix place of abode and the possibility of fleeing away from justice seems remote. The apprehension on the part of the prosecution and the concern over recovery of alleged weapon of assault can be addressed by directing the applicant to co-operate with the

investigation and attend the police station. Such presence of the applicant with the police, in view of the pronouncement of the Supreme Court in the case of **Sushila Aggarwal and Ors. V/s. State (NCT of Delhi) and Anr.**¹ would constitute police custody for the purpose of Section 27 of the Indian Evidence Act.

13. I am, therefore, persuaded to exercise the discretion in favour of the applicant.

14. Hence, the following order :

ORDER

(i) In the event of the arrest of the Applicant – Altamash Aurangzeb Khan in connection with C.R.No.154 of 2023 registered with Dongri Police Station, the Applicant be released on bail on furnishing a PR bond in the sum of Rs.30,000/- with one or two sureties in the like amount.

(ii) The Applicant shall co-operate with the investigation and report to Dongri Police Station on every Sunday from 10.00 a.m. to 12.00 noon for a period of one month and, thereafter, as and when directed by the Investigating Officer, till the filing of the chargesheet.

(iii) The Applicant shall not tamper with the prosecution evidence and/or give threat or inducement to any of the prosecution witnesses or the persons acquainted with the facts of the case.

1 (2020) 5 SCC 1

(iv) The Application stands disposed.

(v) In view of the disposal of the application, Interim Application No.3016 of 2023 also stands disposed.

(N.J.JAMADAR, J.)