

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

ANTICIPATORY BAIL APPLICATION NO. 2395 OF 2023

SANTOSH
SUBHASH
KULKARNI

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Sayyad Akbar Sayyad Sattar and anr. ...Applicants
Versus
State of Maharashtra ...Respondent

Mr. Abid Mulani, i/b Ashish Agarkar, for the Applicants.
Mr. R. M. Pethe, APP for the State/Respondent.
PN Dinkar Pondkule, Wakad Police Station, Pimpri
Chinchwad City, present.

CORAM: N. J. JAMADAR, J.
DATED: 31st AUGUST, 2023

ORDER:-

1. Heard the learned Counsel for the applicants and the learned APP for the State.
2. This application is preferred for pre-arrest bail in connection with CR No.598 of 2023, registered with Wakad Police Station, for the offences punishable under Sections 308, 323 and 326 read with Section 34 of Indian Penal Code, 1860 ("the Penal Code") and Section 37(1) read with Section 135 of the Maharashtra Police Act, 1951.
3. The first informant lodged a report with the allegation that on 22nd June, 2023 his brother informed him that co-accused Khaja Bagwan, who had purchased the fruits on

credit, was refusing to pay the price of the fruits sold to him and thereupon the first informant and his another brother reached Kalewadi, Pune. An altercation ensued. Co-accused Khaja Bagwan and Sadik Bagwan alongwith the applicants charged on the first informant. When his nephew Sakeb tried to intervene co-accused Khaja and applicant No.1 Akbar started to assault him by means of fist. As the first informant attempted to rescue Sakeb, co-accused Khaja picked up a fruit knife and gave blows by means of knife on the back of Sakeb as well as a blow on the chest of the first informant. As they sustained bleeding injury, the applicants and co-accused fled away.

4. The learned Counsel for the applicants submitted that evidently no overt act has been attributed to the applicants. Allegedly, it was the co-accused Khaja, who unleashed the blows by means of knife. Thus, the arrest of the applicants is not warranted to facilitate effective investigation.

5. On perusal of the allegations in the FIR, it becomes evident that the role of assault by means of knife is specifically attributed to co-accused Khaja. Indeed the first informant has stated about the presence of the applicants at the scene of occurrence. But only the role of charging on the

person of the first informant and assaulting Sakeb by means of fists has been attributed to applicant No.1 Akbar. Moreover, accused No.1 Khaja allegedly picked up the knife which was on the fruit cart and thereafter assaulted Sakeb. Thus the question as to whether the applicants shared the common intention to commit the offences punishable under Sections 326 and 308 of the Penal Code would also arise for consideration.

6. Since the applicants appear to have roots in society, the possibility of fleeing away from justice appears to be remote. I am, therefore, inclined to exercise the discretion in favour of the applicants.

7. Hence, the following order:

: O R D E R :

- (i) In the event of arrest of the applicants in CR No.598 of 2023, registered with Wakad Police Station, the applicants 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, each.
- (ii) The applicants shall cooperate with the investigation and attend Wakad Police Station on

every Sunday in between 10.00 am. to 1.00 pm. for a period of one month.

- (iii) The applicants shall not tamper with the prosecution evidence and/or give threat or inducement to the first informant and any person acquainted with the facts of the case.
- (iv) It is clarified that these *prima facie* observations are confined to determine entitlement to pre-arrest bail only.

Application stands disposed.

[N. J. JAMADAR, J.]