

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.2988 OF 2023

Fazlul Haque Mohammad Shafi Khan and Others ...Applicants

vs.

The State of Maharashtra and Another ...Respondents

Mr. Sanjiv Kadam a/w. Mr. Prashant Raul, Ms. Muskan Shaikh i/b.
Mr. Mateen Shaikh, for the Applicants.

Mr. M.G. Patil, APP, for the Respondent/State.

Mr. M.K. Sangale, PSI, Bhiwandi police station.

CORAM : N. J. JAMADAR, J.

DATE : OCTOBER 26, 2023

P.C.:

1. Heard the learned counsel for the applicants and the learned
APP for the State.

2. This application is preferred seeking pre-arrest bail in
connection with C.R. No. 450 of 2023 registered at Bhiwandi City
police station for the offences punishable under sections 143, 149,
324, 504 and 506 of Indian penal Code, 1860. Subsequently an
offence punishable under section 326 of the Code has been added.

3. The first informant is a nephew of the applicant No. 1. There
have been disputes between the first informant and the applicants
over the family properties. On 9th September, 2023 at about 11.30
pm, while the first informant was sitting in the office of Tamanna
Motors, the applicants came thereat along with 4-5 associates. They
started to remove the banner of Shalimar Tea House. When the first

informant protested, the applicant No. 1 punched the first informant below the left eye. Applicant No. 2 allegedly gave blow with a sharp object on the back of the first informant. Thereafter, the first informant rushed to the police station and, after having treatment, lodged the report.

4. The learned counsel for the applicants submitted that initially the offences punishable under sections 143, 149, 324, 504 and 506 of Indian penal Code, 1860 were lodged. After about 25 days of the lodging of the incident, section 326 of the Code came to be added. It was submitted that on account of family disputes, the applicants have been roped in.

5. The learned APP, on the other hand, invited attention of the Court to the injury certificate issued by Heal Life Hospital which indicates that the first informant had sustained grievous injuries. Thus, to facilitate further investigation, the custodial interrogation of the applicants is warranted.

6. In the injury certificate, issued by the Indira Gandhi Hospital, Bhiwandi, only simple injuries were noted awaiting report of the ex-ray as regards the tooth disruption. Heal Life Hospital, however, opined that there was a grievous injury on left upper scapular area of skull and left eye and tooth disruption.

7. Prima facie, it appears that the injury attributed to the

applicant No. 1 was on the left eye of the first informant. The applicant No. 1 had allegedly punched the first informant. Applicant No. 2 is alleged to have assaulted by means of a sharp object. However, that injury is not designated as grievous. The first informant does not allege that any other assailant was armed with any weapon. The question as to whether an offence punishable under section 326 of the Code is made out, prima facie, appears to be debatable.

8. In the aforesaid backdrop, having regard the genesis of the dispute over family properties, the custodial interrogation of the applicants does not seem warranted.

9. In view of above, I am inclined to exercise the discretion in favour of the applicant.

10. In the event of arrest in C.R. No. 450 of 2023 registered with Bhiwandi City police station, the applicants be released on bail on furnishing a P.R. bond in the sum of Rs.30,000/- with one or two sureties in the like amount, each.

11. The applicants shall cooperate with the investigation and attend Bhiwandi City police station, on 2nd, 3rd, and 4th November, 2023 in between 10 am to 1 pm and, thereafter, as and when directed.

12. The applicants shall not tamper with the prosecution

evidence and give threat or inducement to first informant, any of the prosecution witnesses or any person acquainted with the facts of the case.

13. The applicants shall regularly attend the proceedings before the jurisdictional Court.

14. It is clarified that these prima facie observations are confined to determine entitlement to pre-arrest bail only.

Application disposed.

(N. J. JAMADAR, J.)