



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.3017 OF 2023**

Nijamuddin Shamshuddin Shaikh and Anr. ... Applicants
versus
The State of Maharashtra ... Respondent

Mr. Aniket Nikam with Mr. Aashish Satpute i/by Mr. Amit Icham, for Applicants.
Mr. S.H.Yadav, APP for State.
Ms. Rekha Musale, for complainant.
Mr. Kishor J. Shinde, Ambarnath Police Station present.

CORAM: N.J.JAMADAR, J.

DATE : 31 OCTOBER 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.481 of 2023 registered with Ambarnath Police Station for the offences punishable under Sections 307, 326, 324, 323, 506(2), 143, 144, 147, 148, 149, of the Indian Penal Code, Section 3 read with Section 25 of the Arms Act and Sections 37(1) and 135 of the Maharashtra Police Act, 1951.
3. The first informant and his brother Rakesh had a quarrel with Applicant No.1 prior to one month of the occurrence. The applicant No.1 had lodged a report against the first informant with Ambarnath Police Station. Since then, the applicants had a grudge against the first informant and his brother. On 19 September 2023 at about 11.00 p.m., when the first informant had been to pharmacy to fetch medicines

along with his wife and niece, two co-accused – Lala Khan and Aman intercepted the first informant. They abused the first informant. Aman allegedly assaulted the first informant by means of pistol. Co-accused Lala assaulted him by means of stick. The applicants and their 4-5 associates came thereat on motorcycle. They were armed with iron rod, bat and sticks. They allegedly assaulted the first informant, his wife and niece. As the first informant's wife and niece raised alarm, the assailants fled away.

4. Apprehending arrest, the applicants approached the Court of Session. As the learned Sessions Judge declined to exercise the discretion, the applicants have preferred this application.

5. The learned Counsel for the Applicants submitted that on account of the report No.428 of 2023 lodged against the first informant, his brother and associates for the offences punishable under Sections 143, 144, 147, 148, 326, 324, 323, 504, 506, 336, 427, 149 of IPC in which the applicant No.1 had sustained grievous injuries, the applicants have been falsely roped in. The applicants were not the members of the unlawful assembly in prosecution of the common object of which, the first informant was allegedly assaulted.

6. Attention of the Court was invited to an order passed by the learned Magistrate on 6 October 2023 wherein the learned Magistrate recorded that the police had collected CCTV footages. It was submitted that the CCTV footages would indicate that the applicants were not the assailants.

7. Learned APP resisted the application by submitting that the applicants were very much part of the unlawful assembly. The applicants had instigated the co-accused to mount murderous upon the first informant who has sustained grievous injuries. As there is direct evidence and specific allegations, the applicants do not deserve the exercise of discretion. Learned APP further submitted that the applicants have criminal antecedents and preventive action has also been initiated against the applicants.

8. Ms. Musale, learned Counsel for the first informant, submitted that the first informant has sustained fracture on both the hands. Having regard to the antecedents of the applicants, if the applicants are released on bail, there is strong possibility of tampering with evidence and threatening the witnesses. None of the accused have been arrested in these offences.

9. Prima facie, there are allegations to indicate that the first informant was accosted and intercepted by the co-accused and he was assaulted by means of dangerous weapons. The statements of the wife and niece of the first informant lend prima facie support to the version of the first informant. The first informant had sustained grievous injuries in the assault perpetrated by the assailants. First informant and his wife have reiterated the allegations in their statements recorded under Section 164 of the Code of Criminal Procedure, 1973.

10. The submission on behalf of the applicants that the applicants have been

roped in as the report of assault was lodged against the first informant and his brother being C.R.No.428 of 2023, at this stage, constitutes a double edged tool. It furnishes a motive for the assault on the first informant as well.

11. The only issue which merits consideration at this stage is the claim of the applicants that they were not the members of the unlawful assembly in prosecution of the common object of which the first informant was assaulted. The thrust of the submission on behalf of the applicants is that the CCTV footages do not show the applicants as the assailants.

12. I have perused the panchanama of the CCTV footages. Prima facie, it appears that the assailants came on three motorcycles. Four of them, who were riding two motorcycles, mounted assault on the first informant by means of stick. The applicants, it seems were not identified in the statements of the first informant after the CCTV footage was shown to him as the assailants. However, in the circumstances of the case, in my view, that does not insulate the applicants of the prima facie complicity. The first informant has identified the applicants as the persons who were then present with the assailants. The fact that the CCTV footage do not show that the applicants mounted assault is of no significance as the time and place of the occurrence indicate that the murderous assault on the first informant was perpetrated in prosecution of the common object of the unlawful assembly. The attack was premeditated.

13. At this stage, the antecedents of the applicants also deserve to be taken into account. It appears that crimes have been registered against the applicants at Ambarnath Police Station, since the year 2012. Preventive action has been taken against Applicant No.1. The antecedents of the applicants dissuade the court from exercising the discretion in favour of the Applicants. In the aforesaid view of the matter, in the totality of the circumstances, the custodial interrogation of the applicants appears to be necessary to facilitate further investigation.

14. Apprehension on the part of the prosecution, in the backdrop of the antecedents of the applicants, appears to be well founded. Since the first informant was assaulted in the presence of his wife and 10 year old niece, the possibility of tampering with evidence and threatening the witnesses also cannot be ruled out.

15. Resultantly, I am not inclined to exercise the discretion in favour of the Applicants.

16. Hence, the following order :

ORDER

(i) The application stands rejected.

(ii) It is clarified that these prima facie observations are confined to determine the entitlement to pre-arrest bail only.

(N.J.JAMADAR, J.)