



Sayali Upasani

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

ANTICIPATORY BAIL APPLICATION NO. 3117 OF 2023

Akshay Gorakh Gholap and Others

...Applicants

Vs.

The State of Maharashtra and Others

...Respondents

Mr. K. Aphale, for Applicant appearing through V.C.

Mr. S. H. Yadav APP for State.

Mr. Pranav Bhote, for Respondent No. 2- Complainant.

Mr. M. K. Abnave, PSI, Daund Police Station, Present.

CORAM:- N. J. JAMADAR, J.

DATED:- 7th NOVEMBER, 2023

PC:-

- 1) Heard the learned counsel for the parties.
- 2) This application is preferred for pre-arrest bail in connection with C.R. No. 386 of 2023, registered with Daund Police Station, for the offences punishable under Sections 143, 147, 148, 149, 307, 329, 354, 452, 427, 504 and 506 of Indian Penal Code, 1860 ("the Penal Code").

3) By an order dated 12th October, 2023, this Court has granted pre-arrest bail to co-accused ascribing reasons.

4) The learned APP submitted that there are two antecedents of the applicants and it is necessary to impose appropriate conditions, in the event, the Court proposes to leads this application of pre-arrest bail on parity.

5) The learned Counsel for the respondent No. 2 fairly submits that the role attributed to the applicants is identical to that of the co-accused who have been released on pre-arrest bail.

6) The learned Counsel further submitted that in the FIR, the first informant had attributed the role of assault to all the accused.

7) I am afraid this submission can be considered at this stage. In the order dated 12th October, 2023, this Court had inter alia recorded as under:-

12. Evidently, in respect of one and the same occurrence two versions have been reported. Interestingly, in both the matters the first information report was lodged by a lady and prelude to assault is the attempt to outrage the modesty of the first informant lady. The informant in both the crimes claimed to have rushed to the safety of their respective houses. They were followed by the members of the accused party armed with

deadly weapons, and the resultant assault on the first informant and her relatives.

13. From the material on record, it prima facie appears that it was a case of free fight between two groups, having a communal overtone.

14. Undoubtedly, the instant first information report came to be registered at a later point of time pursuant to the directions of the learned Magistrate under section 156(3) of the Code of Criminal Procedure, 1973. The first information report No. 547 of 2022 was registered on 9th November, 2022 wherein role of assault by means of deadly weapons was attributed to the injured herein. The two FIRs thus represent a case and a cross-case. In a case of this nature, where the members of two groups indulge in a free fight and sustain injuries in the occurrence, the question as to whether each of the members of the respective unlawful assemblies, shared the common object or knew that the offences were likely to be committed in prosecution of the said common object, becomes critical and warrants adjudication.

15. In the case at hand, there is an interval of time between the date of occurrence and the lodging of first information report No. 547 of 2022. The complainant, it seems, came to be lodged after the complainant's report was not allegedly recorded. Prima facie, however, there is material to indicate that the injured Iliyas and Sufiyan were initially taken to the Sub District Hospital, Daund and thereafter to private hospital and a history of assault by known persons was narrated. The injury certificates reveal that Iliyas had suffered a grievous hurt on fronto temporal region and two simple injuries on occipito region. The injured Sufiyan had sustained two simple injuries on frontal area and the chest.

16. In the backdrop of the aforesaid nature of the injuries if the allegations in the FIR are considered, it prima facie, appears that the role of assault by deadly weapons has been

attributed to a number of accused. Prima facie, it appears that Iliyas suffered grievous hurt and two simple injuries. Assault to Iliyas is attributed to a number of accused, including applicants Gorakh Gholap, Shrinath Nanaware and Deepak Kamble apart from the co-accused Mahesh Ghone, Kunal Gholap and Babu Jamdade. Since one of the injuries appears to be grievous, at this stage, it appears to be difficult to attribute the said grievous injury to the particular accused. None of the applicants has been attributed with the role of assault to Sufiyan specifically. The injury on frontal area suffered by Sufiyan appears to be, prima facie, attributable to co-accused Mahesh Ghone.

17. In the backdrop of free fight, where the injured herein have been accused in C.R.No.547 of 2022, prima facie, the applicants can be said to have furnished a version which competes in probability and reported much prior in point of time.

18. I am, therefore, inclined to exercise the discretion in favour of the applicants.

8) On parity of reasons, the applicants are also entitled to pre-arrest bail.

9) Hence, the following order:-

ORDER

I) In the event of arrest of the applicants in connection with C.R. No. 386 of 2023, registered with Daund Police Station, for the offences punishable under Sections 143, 147, 148, 149, 307, 329, 354, 452, 427, 504 and 506 of Indian Penal Code, 1860, the applicants be released on bail

on executing a PR Bond in the sum of Rs.30,000/- each, with one or two sureties in the like amount.

II) The applicants shall co-operate with the investigation and attend Daund police station, on first Monday of every month in between 10.00 am to 12.00 noon for a period of Nine months from today.

III) The applicants shall not tamper with the prosecution evidence and/or give threat or inducement to the first informant and any of the persons acquainted with the facts of the case.

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

V) The application stands disposed.

[N. J. JAMADAR, J.]