

Santosh

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

ANTICIPATORY BAIL APPLICATION NO. 3213 OF 2023

SANTOSH
SUBHASH
KULKARNI

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Date: 2023.11.10
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1. Rupesh Motiram Pagade
2. Nilesh Bhalchandra Bahira
3. Tanmay Hiranman Bahira
Versus
The State of Maharashtra

...Applicants
...Respondent

AND

ANTICIPATORY BAIL APPLICATION NO. 3214 OF 2023

Kalpesh Hiranman Bahira
Versus
The State of Maharashtra

...Applicant
...Respondent

Mr. Ayush Pasbola, a/w Jagrut Patil, for the Applicant.
Mr. M. G. Patil, APP for the State/Respondent.
Mr. Kaustubh Kandpile, for the First Informant.
API Swapnil Kedar, Panvel City Police Station, present.

CORAM: N. J. JAMADAR, J.
DATED: 9th NOVEMBER, 2023

ORDER:-

1. Heard the learned Counsel for the applicant and the learned APP for the State.
2. At the outset, the learned Counsel for the applicant seeks leave to withdraw the application qua applicant No.1 Rupesh in ABA/3213/2023.

Leave granted.

3. Application of Rupesh Pagade, applicant No.1 in ABA/3213/2023, stands dismissed as withdrawn.

4. Heard the learned Counsel for the applicant and the learned APP for the State.

5. These applications are for pre-arrest bail in connection with CR No.519 of 2023, registered with Panvel City, Navi Mumbai, for the offences punishable under Sections 143, 144, 146, 147, 324, 148, 149, 504 and 506 of Indian Penal Code, 1860 ("the Penal Code").

6. The first informant and his family members were working on a field which was recently given for development to Manas Group. Mr. Saeed Mulla, the owner of the said farm, had assured the first informant and his family members that in the development, which would be carried out on the said farm, they would be provided work. On 12th September, 2023, the parents of the first informant had been to the work site to enquire about the work order. An altercation ensued. The applicant and the co-accused allegedly abused and assaulted the first informant's parents. The first informant and his relatives reached to rescue them. Thereupon the applicant and co-accused formed an unlawful assembly and in prosecution of the common object of the

unlawful assembly committed rioting armed with wooden plank and sticks. Rupesh Pagade allegedly assaulted the aunt of the first informant Kalpana Pagade by means of a wooden plank. The applicant Nilesh and Tanmay also assaulted the first informant's sister-in-law Sona. The first informant was also assaulted by Nilesh.

7. The learned Counsel for the applicant submitted that initially FIR was lodged for the offence punishable under Section 324 only. Subsequently, an offence punishable under Section 326 came to be added. In fact, in the said incident, the accused party had also sustained injuries. However, their reports were not recorded.

8. The learned APP and the learned Counsel for the first informant submitted that the injured Kalpana had sustained a grievous injury. Other members of the informant party had also sustained injuries. Female members of the informant party were assaulted by the applicants. Therefore, the applicants do not deserve the exercise of discretion.

9. It appears that an altercation ensued over providing work to the members of the informant party. A number of persons from both the sides were involved in the farcas. Kalpana Pagade, the injured seems to have sustained a

fracture. Rest of the injured seems to have sustained simple injuries. The grievous hurt suffered by the Kalpana is attributed to Rupesh.

10. In a situation of this nature, the question as to whether each of the member of the unlawful assembly shared common object or in knew that the offences would be committed in prosecution of the common object of the unlawful assembly, would arise for adjudication.

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

12. Hence the following order:

: O R D E R :

- (i) In the event of arrest of Nilesh Bahira and Tanmay Bahira, the applicants in ABA/3213/2023 and Kalpesh Bahira, the applicant in ABA/3214/2023 in CR No.519 of 2023, registered with Panvel City, Navi Mumbai, 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, each.
- (ii) The applicants shall cooperate with the investigation and attend Panvel City Police Station on 23rd, 24th and

25th November, 2023 in between 10.00 am. to 1.00 pm.
and, thereafter, as and when directed.

- (iii) The applicants shall not tamper with the prosecution evidence and/or give threat or inducement to the first informant or any of the persons 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.

Applications stand disposed.

[N. J. JAMADAR, J.]