



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

ANTICIPATORY BAIL APPLICATION NO.3298 OF 2023

Anil Madhukar Bhabad and Anr. ... Applicants
versus
The State of Maharashtra ... Respondent

Mr. Hrishikesh P. Giri, for Applicant (VC).
Ms. Anamika Malhotra, APPfor State.
Mr. K.D.Deshmukh, PSI, Dindori Police Station, Nashik Rural, present.

CORAM: N.J.JAMADAR, J.

DATE : 6 DECEMBER 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.479 of 2023 registered with Dindori Police Station for the offences punishable under Sections 307, 326, 325, 323, 504, 506, 143, 137, 148, 149 of the Indian Penal Code and Section 135 of the Maharashtra Police Act, 1951.
3. On 25 September 2023 while the first informant along with his family members were passing through Morwadi village, the applicants and the co-accused allegedly raked up quarrel with the first informant on account of a previous dispute. The applicants and the co-accused formed an unlawful assembly and in prosecution of the common object of the unlawful assembly assaulted the first informant, his brother Namdev and Mahesh Ghuge by means of iron rod and threatened them with dire

consequences. The first informant's cousin Ganesh and nephew Rahul were also allegedly assaulted by the applicants and co-accused.

4. The learned Counsel for the Applicants submitted that in respect of the very same occurrence, Accused No.7 – Gorakh had lodged report being C.R.No.478 of 2023 for the offences punishable under Sections 143, 147, 148, 149, 354, 324, 323, 504, 506 read with 34 of IPC first in point of time. The presence of the applicants at the scene of occurrence is not reflected in the said FIR. With a view to give a counter blast to the said FIR, the informant party has lodged the instant FIR, at a later point of time. It was further submitted that even if the allegations in the FIR are taken at par, the role attributed to the applicants is that of assaulting Mahesh by means of fist and kick blows.

5. Learned APP resisted the application. Attention of the Court was invited to injury certificate of Namdev. It was submitted that the injured had sustained grievous injuries. Prima facie, it appears that there was a fight between two groups. In a virtual free fight, members of both the groups have sustained injuries. The applicants have not been attributed with the role of assault by means of any weapon. They allegedly assaulted Mahesh by means of fist and kick blows. In a case of this nature, whether the applicants also shared common object of the unlawful assembly or knew that the offence of attempt to commit murder would be committed in prosecution of the common object of the unlawful assembly would warrant

consideration. Having regard to the role attributed to the applicants and the fact that there is a counter version which is prior in point of time and also competes probability, I am inclined to exercise the discretion in favour of the applicants.

6. Hence, the following order :

ORDER

(i) In the event of the arrest of the Applicants – Anil Madhukar Bhabad and Ankush Bapu Bhabad in connection with C.R.No.479 of 2023 registered with Dindori Police Station, they be released on bail on furnishing 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 report to Dindori Police Station on 14th, 15th and 16th December 2023 in between 10.00 a.m. to 1.00 p.m., 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 prosecution witnesses or any of the persons acquainted with the facts of the case.

(iv) The Applicants shall regularly attend the proceedings before the jurisdictional Court.

(v) The application stands disposed.

(vi) It is, however, clarified that the observations are confined to the consideration of entitlement for pre-arrest bail and the trial Court shall not be

influenced by any of the observations in further proceedings.

(N.J.JAMADAR, J.)