



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.3305 OF 2023**

Aatif Aarif Tase	...	Applicant
versus		
The State of Maharashtra	...	Respondent

WITH
INTERIM APPLICATION NO.4439 OF 2023
IN
ANTICIPATORY BAIL APPLICATION NO.3305 OF 2023

Salim Rauf Bubere	...	Intervener
and		
Aatif Aarif Tase	...	Applicant
versus		
The State of Maharashtra	...	Respondent

Mr. Subhash Jha with Ms. Praveena Venkatraman i/by Law Global Advocates, for Applicant.

Smt. A.A.Takalkar, APP for State.

Mr. Pawan Mali with Mrs. Sunita Warang i/by Mr. Satish Mishra, for Intervener.

Mr. Chaudhari, PSI, Manor Police Station, present.

CORAM	: N.J.JAMADAR, J.
HEARD ON	: 6 DECEMBER 2023
PRONOUNCED ON	: 8 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.329 of 2023 registered with Manor Police Station for the offences punishable under Sections 307, 324, 143, 147, 148, 149 of the Indian Penal Code.
3. There is a dispute over the immovable property situated at S.No.39, Mauje Tin between the first informant's family and Zaki Bhure – Accused No.1 and

Gulshan Arif Tase, another co-accused. In the suit instituted before the Civil Court at Palghar, an injunction has been granted against the accused party. The first informant alleged, on 18 October 2023, upon being informed that persons had gathered at the said disputed property, the first informant reached the site. He found few persons in the Container at site. The first informant noticed that in the adjoining land held by Zabi Raut, Khalil and Dilkush, Accused No.1 Zaki was fixing the board, with the assistance of his associates. Advocate Rajay Gaikwad – Accused No.2 and the applicant – accused No.3 were amongst them. Thereupon, the above named persons and other witnesses questioned Zaki and his associates.

4. The first informant alleged that the accused Nos.1 to 3 and 10-12 females and 10-12 males formed an unlawful assembly and in prosecution of common object of unlawful assembly started assaulting Zabi Raut, Khalil and others by means of wooden stick, iron rod and hockey stick. The first informant went to their rescue. Thereupon, the first informant was also assaulted by means of hockey stick and wooden stick. One of the members of the unlawful assembly whipped out a knife and gave blow on the chest of Zabi, with intent to kill him. When Imtiyaz, another injured, went to the rescue of Zabi, the said assailant gave blow by means of knife on his left leg. Other persons were also assaulted. Hence, the report.

5. Mr. Jha, learned Counsel for the Applicant, submitted that in respect of the very same occurrence, a member of the accused party – Rehman, has lodged a

report vide C.R.No.330 of 2023. Though five members of the accused party had sustained injuries and one of the injured had sustained life threatening injuries and was admitted in the hospital for a number of days, the police registered the crime for the offences punishable under Sections 143, 147, 148, 323, 324, 504, 506, 427 of the IPC. The police machinery has designedly registered the crime against the accused party for grave offences and deliberately registered bailable offences against the informant party. It was further submitted that the falsity of the prosecution version qua the applicant is borne out by the fact that the applicant was not at all present at the scene of occurrence as the applicant was then at MacDonald Family restaurant, Haloli Village, Palghar. It was, therefore, physically impossible for the applicant to be present at the scene of occurrence as well. The said fact is, according to Mr. Jha, documented by the CCTV footages at the MacDonald restaurant and the bill paid by the applicant thereat.

6. Mr. Jha further submitted that even if the allegations in the FIR are taken at their face value, no role of assault, much less, by means of a deadly weapon, like knife, is attributed to the applicant. Where the members of both the groups have sustained injuries, the question as to who was the aggressor would warrant determination. Therefore, the applicant deserves exercise of discretion.

7. Smt. Takalkar, learned APP countered the submissions of Mr. Jha. It was urged that there are direct allegations against the Applicant in the FIR. Those

allegations find support in the injury certificate. In the statements of the injured witnesses also, the role of the applicant has been specifically spelled out. Therefore, at this juncture, the plea of alibi does not deserve to be considered. Asserting that the offences are of serious nature as Zabi had sustained life threatening injury, learned APP would urge that the applicant does not deserve the exercise of discretion.

8. Initially, it was submitted on behalf of the prosecution that 20 odd cases were registered against the applicant. As the said claim was disputed, the matter came to be posted on 6 December 2023, directing the prosecution to place on record the antecedents of the applicant and state as to whether the members of the accused party had sustained any injuries, in the alleged occurrence. On 6 December 2023, the Court was informed that the applicant has been arraigned in three CRs, namely, 277 of 2013, 69 of 2014 and 342 of 2014 and a NC case No.995 of 2000 is registered against the applicant for having committed an offence punishable under Section 160 of the IPC.

9. Mr. Mali, learned Counsel for the first informant – Intervener, also resisted the prayer for pre-arrest bail. It was submitted that despite an injunction order having been passed by the Civil Court, the applicant and the co-accused have brazenly endeavoured to dispossess the informant party and establish their possession in flagrant violation of the order of the Court. The accused party had made such an endeavour on 21 July 2020, in respect of which FIR 130 of 2020 was lodged. Therefore, the applicant who has no regard for law does not deserve exercise of

discretion.

10. Mr. Mali would urge that the defence of alibi is a matter for trial. Such defence cannot be taken into account at the stage of consideration of prayer for pre-arrest bail, especially when the applicant has been categorically named by the first informant and the injured witnesses. It was submitted that the applicant and his family has been indulging in violent acts and a number of crimes have been registered against them. Release of the applicant on bail would pose imminent danger to the safety of the witnesses as there is a very strong possibility of tampering with evidence.

11. I have carefully considered the allegations in the FIR, the statements of the witnesses and the nature of the injuries suffered by the first informant and the other injured. Evidently, the genesis of the offences is in the dispute over the possessory and proprietary title to immovable property. Prima facie, it appears that the members of both the groups had gathered at the scene of occurrence. It also emerges from the FIR that the accused party was allegedly attempting to fix the board in the land adjacent to S.No.39, in respect of which a civil suit is stated to be subjudice. The first informant alleges, as the members of the accused party mounted assault on the injured witnesses, he rushed to their rescue. As noted above, there is a counter version in the form of FIR No.330 of 2023 in which the members of the informant party are arraigned as accused. Prima facie, there is material to indicate that few members of the accused party had also sustained injuries.

12. In the backdrop of the aforesaid situation, which emerges from the record, the prayer for pre-arrest bail deserves to be considered. Mr. Mali was justified in canvassing a submission that, at this stage, the Court may not delve deep into the defence of alibi. It is trite, the burden rests on the accused to establish that it was physically impossible for him to be present at the scene of occurrence, to be successful in the plea of alibi. It is true, the applicant has placed on record certain material which merits investigation. However, I am not persuaded to decide the prayer for pre-arrest bail on the said count.

13. Instead, I consider it expedient to delve into the role attributed to the applicant, albeit prima facie. In the FIR, the first informant alleges that the named accused Nos.1 to 3, including the applicant, and their 25 odd associates, started assaulting the injured by means of iron rod and sticks. The statement of Zabi, injured, throws some light on the role of assault attributed to the applicant. Zabi stated that the applicant had caught hold of his collar and started to manhandle him. At this stage, associates of the applicant unleashed blows by means of sticks and iron rod. One of the unknown persons gave blow by means of knife on the left side of his chest. I have perused the statements of two other injured as well.

14. Prima facie, the first informant and the injured, do not seem to have attributed role of assault by a weapon to the applicant. Nor is it alleged that the applicant was armed with any weapon. Undoubtedly, the applicant was alleged to be a

member of the unlawful assembly, nay it's spearhead. In the face of allegation of constructive criminality by invoking Section 149 of the Penal Code, absence of overt act may not be decisive. However, in a situation where it prima facie appears that there was a fight between the members of two groups and members of both the groups have sustained injuries, the question as to whether who was the aggressor and whether a particular member of the unlawful assembly shared the common object to commit murderous assault or knew that the offence of attempt to commit murder was likely to be committed in prosecution of the common object of the unlawful assembly, especially where one out of 25 members of the unlawful assembly whipped out a knife and unleashed blows, would warrant adjudication at the trial.

15. In the totality of the circumstances, especially having regard to the role attributed to the applicant, I am persuaded to hold that the applicant has succeeded in making out a prima facie case for pre-arrest bail. The antecedents of the applicant, as noted above, do not appear to be of such a nature as to dissuade the court from exercising discretion. Those offences have been registered almost 8 years ago. The apprehension on the part of the prosecution of tampering with the evidence and threatening the witnesses, can be taken care of by imposing conditions.

16. Hence, the following order :

ORDER

(i) In the event of the arrest of the Applicant – Aatif Aarif Tase in connection with C.R.No.329 of 2023 registered with Manor Police Station, 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.

(ii) The Applicant shall co-operate with the investigation and report to Manor Police Station on 16th, 18th and 19th December 2023 in between 10.00 a.m. to 1.00 p.m., and, thereafter, as and when directed.

(iii) The Applicant 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 applicant shall not enter the limits of Village Ton, Palghar for a period of six months.

(v) The Applicant shall regularly attend the proceedings before the jurisdictional Court.

(vi) The application stands disposed.

(vii) Interim application also stands disposed.

(viii) 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.)