

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 3330 OF 2023

SANTOSH
SUBHASH
KULKARNI

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Saif Afsar Ahmad Shaikh ...Applicant
Versus
State of Maharashtra ...Respondents

Mr. S. R. Syed, a/w Shafiqua Shaikh, i/b Meezan Legal, for
the Applicant.

Ms. Anamika Malhotra, APP for the State/Respondent.

PSI Gawane, Shahu Nagar Police Station, Mumbai, present.

CORAM: N. J. JAMADAR, J.

DATED: 30th NOVEMBER, 2023

ORDER:-

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

2. This is an application for pre-arrest bail in connection
with CR No.110 of 2023, registered with Shahu Nagar Police
Station, Mumbai, for the offences punishable under Sections
307, 326, 323, 504 and 506 read with Section 34 of Indian
Penal Code, 1860 ("the Penal Code"), Section 37(1) read with
Section 135 of the Arms Act and Section 7 of the Criminal
Law Amendment Act.

3. The indictment against the applicant is that the
applicant and co-accused, in furtherance of their common

intention, had accosted the first informant and his friend Chandar Anareddy, Ganesh Maitri and Manish and had assaulted them by means of deadly weapons. Co-accused Asif and Sameer Shaikh had allegedly assaulted the injured Chandar Anareddy by means of knife. The applicant had unleashed a blow by means of iron rod on the left eyebrow of the first informant.

4. The learned Counsel for the applicant submitted that the first informant had sustained simple injury. Rest of the accused were arrested and have since been released on bail. Assault by means of knife is not attributed to the applicant. There is inconsistency in the statement of the first informant and Chandar Anareddy, which bears upon the veracity of the prosecution case.

5. The learned APP invited the attention of the Court to the injury certificate of Chandar Anareddy, which indicates that the injured had sustained a grievous injury by means of a sharp weapon, apart from a number of simple injuries. It was submitted that the first informant and the injured Chandar, were assaulted in furtherance of common intention. Therefore, the applicant does not deserve the exercise of the discretion.

6. I have perused the allegations in the FIR and the injury certificate of the first informant. It appears that the first informant had sustained a CLW beside the left eyebrow. The Medical Officer designated the injury as simple. The role of assault by means of knife has been attributed to the co-accused, who have been since released on bail. In the context of the role attributed to the applicant, whether the applicant shared common intention to commit murder of the injured Chandar Anareddy with the co-accused appears to be a matter for adjudication at the trial. Since the investigation seems to be practically complete and the role of the applicant *prima facie* appears to be of a relatively lesser degree than the co-accused, I am inclined to exercise the discretion in favour of the applicant.

7. Hence the following order:

: O R D E R :

- (i) In the event of arrest of the applicant in CR No.110 of 2023, registered with Shahu Nagar Police Station, 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.

- (ii) The applicant shall cooperate with the investigation and attend Shahu Nagar Police Station on 7th 8th and 9th December, 2023 in between 10.00 am. to 1.00 pm. 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 persons acquainted with the facts of the case.
- (iv) The applicant shall regularly attend the proceedings before the jurisdictional court.
- (v) It is clarified that these *prima facie* observations are confined to determine entitlement to pre-arrest bail only.

Application stands disposed.

[N. J. JAMADAR, J.]