

Sayali Upasani

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

ANTICIPATORY BAIL APPLICATION NO. 3388 OF 2023

Kalu Govind Bendke and Others ...Applicants

Versus

The State of Maharashtra ...Respondent

Mr. Ajinkya V. Taskar, for Applicants.

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

Mr. R. S. Aawane, API, Vadner Bhairav Police Station,
Present.

CORAM:- N. J. JAMADAR, J.

DATED:- 5th DECEMBER, 2023

P.C.:-

- 1) Heard the learned Counsel for the applicants and the learned APP for the State.
- 2) This is an application for pre-arrest bail in connection with C.R. No. 237 of 2023, registered with Vadner Bhairav Police Station, Nashik Rural, for the offences punishable under Sections 143, 147, 149, 323, 324, 504 and 506 of Indian Penal Code, 1860 ("the Penal Code").

3) At the outset, the learned Counsel for the applicants, on instructions, seeks leave to withdraw the application qua the applicant No. 2 Dattu Bendake and applicant No. 3 Ganesh Bendake.

Leave granted.

4) The application of applicant No. 2 - Dattu and applicant No. 3 - Ganesh stands dismissed as withdrawn.

5) There was a dispute between the first informant's family and that of the accused over the common way in Gat No. 459. On 18th October, 2023, accused No. 1- Sangitabai Bendake, the mother of applicant No. 1- Kalu Bendke, raked up a quarrel with the father of the first informant and attempted to restrain them from using the common way. An altercation ensued. Applicant No. 1- Kalu allegedly abused the father of the first informant. Co-accused Dattu and Ganesh allegedly assaulted the father of the first informant by means of a stick and the handle of a spade. Applicant No. 1 – Kalu had also assaulted the first informant by means of a Bambu stick.

6) The injury certificate of the father of the first informant reveals that he had sustained grievous injuries. He had fractured the 8th and 9th ribs on the right side. Applicant No. 1- Kalu had allegedly given blows to the first informant by

means of a Bambu stick. It does not appear that the first informant had sustained any grievous injuries.

7) Prima facie, it appears that the genesis of the offences is in a dispute over the common way. An altercation had ensued leading to a free fight. Members of both groups seem to have participated in the free fight. In this view of the matter, whether the applicant shared the common object to cause grievous hurt to the first informant's father or whether the applicant knew that the offence punishable under Section 326 of the Penal Code was likely to be committed in prosecution of the common object of the unlawful assembly, warrants adjudication at the trial.

8) Thus having regard to the role attributed to the applicant No. 1- Kalu, I am inclined to exercise the discretion in favour of the applicant No. 1 – Kalu.

9) Hence, the following order:-

ORDER

I) In the event of arrest of the applicant No. 1 – Kalu in connection with C.R. No. 237 of 2023, registered with Vadner Bhairav Police Station, Nashik Rural, for the offences punishable under Sections 143, 147, 149, 323, 324, 504 and 506 of Indian Penal Code, 1860, the applicant No. 1 - Kalu be

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

II) The applicant No. 1 – Kalu shall co-operate with the investigation and attend Vadner Bhairav Police Station, Nashik Rural on 12th and 13th December, 2023 in between 10.00 am to 1.00 pm and, thereafter, as and when directed by the Investigating Officer.

III) The applicant No. 1 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 the entitlement to pre-arrest bail only.

V) The application stands disposed.

[N. J. JAMADAR, J.]