

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.3406 OF 2023

Rameshrey Mahendra Narayan Pathak	...Applicant
vs.	
The State of Maharashtra	...Respondent

Mr. Rakeshkumar Tiwari, for the Applicant
Ms. Anamika Malhotra, APP, for the Respondent/State.
Mr. S.T. Avate, PSI, Kurar police station.

CORAM : N. J. JAMADAR, J.
DATE : DECEMBER 7, 2023

P.C.:

1. Heard the learned counsel for the applicant and the learned APP for the State.
2. This application is preferred seeking pre-arrest bail in connection with C.R. No. 629 of 2023 registered at Kurar police station for the offences punishable under section 326 of Indian penal Code, 1860.
3. The first informant and the applicant are the residents of the same society. On 22nd October, 2023 as there was no water supply in the society, one of the resident was filling water from the adjoining building. While the first informant was filling the water, the applicant demanded to give chance to fill the water. As the first informant asked him to wait and the water supply from the

adjoining building also stopped, the applicant allegedly pushed the first informant. An altercation ensued. The applicant allegedly picked up a wooden stick and gave blows by means of stick on the right hand of the first informant. The first informant sustained a fracture.

4. The learned counsel for the applicant submitted that on account of previous animosity the applicant has been falsely roped in. The applicant is 64 years of age. There was no pre-meditation.

5. The learned APP submitted that there are eye witnesses to the occurrence. Attention of the Court was invited to the medico-legal papers which indicate that tenderness and swelling was noticed on the right wrist of the first informant and fracture was suspected.

6. Prima facie, it appears that the incident had occurred in the spur of the moment. There was no pre meditation. The applicant had allegedly picked up the stick which was lying at the spot. The medico-legal paper does not indicate that there was any other injury on the person of the applicant apart from tenderness and swelling of the wrist.

7. In the circumstances, whether an offence punishable under section 326 of the Penal Code can be said to have been prima facie made out, would be a matter for trial. The applicant seems to be

more than 60 years of age. He has roots in the society. Possibility of fleeing away from justice seems to be remote. So far as the concern of the prosecution of the recovery of the weapon of assault i.e. wooden stick, a direction to the applicant to appear before the investigation officer would serve the purpose, as the appearance of the applicant before the investigating officer would amount to “deemed custody” for the purpose of section 27 of the Evidence Act.

8. I am, therefore, inclined to exercise the discretion in favour of the applicant.

9. In the event of arrest in C.R. No. 629 of 2023 registered with Kurar village police station, the applicant be released on bail on furnishing a P.R. bond in the sum of Rs.30,000/- with one or two sureties in the like amount.

10. The applicant shall cooperate with the investigation and attend Kurar village police station, on 14th, 15th and 16th December 2023 in between 10 am to 1 pm and, thereafter, as and when directed.

11. The applicant shall not tamper with the prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses or any person acquainted with the facts of the case.

12. The applicant shall regularly attend the proceedings before

the jurisdictional Court.

13. It is clarified that these prima facie observations are confined to determine entitlement to pre-arrest bail only.

Application disposed.

(N. J. JAMADAR, J.)