



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.3433 OF 2023**

Amit Shyam Pendhari Mithun Shyam Pendhari	...	Applicants
versus		
State of Maharashtra	...	Respondent

Mr. Ashok Mundargi, Senior Advocate i/by Mr. Amarnath Boddul, for Applicants.
Smt. Ashwini A. Takalkar, APP for State.
Mr. Ashutosh Gole, for Complainant.
Mr. M.S.Bhoir, PSI, Achole Police Station, present.

CORAM: N.J.JAMADAR, J.

DATE : 12 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.522 of 2023 registered with Achole Police Station for the offences punishable under Sections 307, 149, 323, 506, 143, 144, 147 and 148 of the Indian Penal Code.
3. The first informant and his friends were invited by the applicant No.1 for a party at Pankhfast Club, Dattani Mall, Vasai (W). After they had dinner, co-accused Ashutosh Mishra allegedly raked up quarrel with the first informant on the count that he was spending more time with Kiran Joshi. Sensing trouble, the first informant and his friends attempted to leave the hotel. When the first informant came down Jai Raichura, co-accused, called him near the car. Thereupon, co-accused

Ashutosh Mishra slapped the first informant. Rest of the co-accused assaulted him by fist and kick blows. When the first informant's friend Udit Singh came to his rescue, he was also assaulted. As two policemen, who were on patrolling duty, arrived at the said plot, they all left the spot. Applicant No.1 Amit exhorted that the informant party be taught a lesson when they proceed ahead.

4. The first informant further alleged, at about 2.00 a.m., while the first informant and his friends were standing near the office of the first informant, the applicants and the co-accused accosted them. Applicant Mithun Pendhari assaulted the first informant by means of knife. Somebody assaulted the first informant by means of a beer bottle on his head. Udit Singh, the first informant's friend, was also assaulted. As people gathered thereat, the assailants fled away. While leaving, the applicant Amit threatened that if the matter was reported to Police, he will be killed.

5. Mr. Mundargi, learned Senior Advocate for the applicants submitted that there were two distinct instances. It was essentially a case of brawl in a drunken state. At the time of the first incident, Applicant No.2 Mithun was not present. Applicant No.1 Amit was absent when the second incident, in which the first informant was allegedly assaulted by means of knife, occurred. It was submitted that the first informant had sustained a CLW on head. In the circumstances, it cannot be said that an offence under Section 307 of IPC is prima facie made out.

6. Inviting attention of the Court to orders passed by this Court in ABA

Nos.3345 of 2023, 3420 of 2023, 3431 of 2023 and 3432 of 2023 wherein co-accused have been granted interim reliefs, Mr. Mundargi would urge that the applicants also deserve the same dispensation. Mr. Mundargi further submitted that indeed there are cases registered against the applicant brothers. However, most of those cases have either been quashed or ended in acquittal. Therefore, the antecedents of the applicants cannot be pressed into service to deny pre-arrest bail.

7. Learned APP submitted that there is direct evidence, which implicates both the applicants. Attention of the court was invited to the panchanama of the CCTV footages which shows the presence of both the applicants at the scene of occurrence and the role of assault attributed to them. Learned APP would urge that the antecedents of the applicants are such that they do not deserve the exercise of discretion. Even after the lodging of the instant FIR, two more FIRs have been registered against the applicants, apart from a number of non-cognizable complaints. Even the Medical Officer who has issued the injury certificate was threatened by the mother of the applicants, who is a former Municipal Councilor.

8. Mr. Gole, learned Counsel for the Intervener, taking the court through the antecedents of the applicants submitted that the applicants have created a reign of terror in the locality.

9. Mr. Mundargi joined the issue by canvassing a submission that Mr. Kiran Joshi, associate of the first informant, has been implicated along with the

applicants in a number of cases. In fact, more offences have been registered against Kiran Joshi. Thus, the applicants cannot be selectively denied the relief of pre-arrest bail.

10. Prima facie, there is material to show that the first informant was assaulted with deadly weapons. The injury certificate lends support to the claim of the first informant. Specific roles have been attributed to both the applicants. Panchanama of CCTV footages lends further support to the prosecution version. Both the applicants have been allegedly seen perpetrating the assault.

11. In the backdrop of the material on record, I am afraid to accede to the submission on behalf of the applicants that the applicant No.1 Amit was not present at the time of second incident. On the one hand, the first informant and the witnesses have attributed specific role to Amit and, on the other hand, the presence of Amit is also prima facie established by the images in the CCTV footages.

12. The antecedents of the applicants also dissuade the court from exercising discretion in favour of the applicants. It is true, few of the offences registered against the applicant No.1 Amit, have been quashed and in a couple of offences, he has been acquitted. Nonetheless number of cases registered against the applicant No.1, prima facie, show that the applicant No.1 has been indulging in offences against the body and property repetitively. Applicant No.2 Mithun is alleged to be the principal assailant. Few crimes have been registered against the applicant

No.2 as well.

13. In the totality of the circumstances, I find substance in the submission of Mr. Gole that the applicants have been resorting to violence frequently. Registration of FIRs and NC complaints, one by the Medical Officer who issued the injury certificate, lends credence to the apprehension that the release of the applicants on bail poses imminent threat to the safety of witnesses and there is a strong possibility of tampering with evidence.

14. Thus, I am not inclined to exercise the discretion in favour of the applicants.

15. Hence, the following order :

ORDER

(i) The application stands rejected.

(ii) 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.)