

Santosh

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

ANTICIPATORY BAIL APPLICATION NO. 3457 OF 2023

SANTOSH
SUBHASH
KULKARNI

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Date: 2023.12.14
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Mohammad Azaruddin Mulla ...Applicant

Versus

The State of Maharashtra ...Respondent

Mr. Kuldeep Nikam, for the Applicant.

Mr. S. H. Yadav, APP for the State.

HC M. D. Jadhav, Vita Police Station, present.

CORAM: N. J. JAMADAR, J.

DATED : 11th DECEMBER, 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.531 of 2023, registered with Vita Police Station, Sangli, for the offences punishable under Sections 324, 504 and 506 of Indian Penal Code, 1860 ("the Penal Code"). Subsequently, an offence punishable under Section 326 of the Penal Code came to be added.

3. Siraj is the brother of the first informant. On 2nd November, 2023 at about 10.30 pm, the first informant noticed that Siraj was engaged in an altercation with the applicant, who is also a relative of the first informant. The applicant allegedly

abused and intimidated Siraj. The applicant allegedly tied a stone at one end of the towel and started moving the same as a slingshot. When the first informant confronted the applicant, as to why he was raking up the quarrel, the applicant allegedly gave a blow by means of the said stone. Hence, the report.

4. The learned Counsel for the applicant submitted that the applicant had no intention to cause any injury to the first informant. Initial quarrel was with Siraj. The allegations in the FIR, even if taken at par, do not make out an offence punishable under Section 326 of the Penal Code. It was further submitted that the custodial interrogation of the applicant is not warranted to facilitate further investigation.

5. The learned APP, on the other hand, submitted that the fact that the applicant had allegedly tied the stone at the one end of the towel, indicates that there was premeditation. Inviting the attention of the Court to the injury i.e. CLW, allegedly sustained by the first informant on the left frontal region, which was designated as grievous, the learned APP submitted that the applicant does not deserve the exercise of discretion.

6. I have perused the allegations in the FIR. It appears that the initial altercation was between the applicant and Siraj. It is not the case that the applicant had assaulted Siraj, the

brother of the first informant. *Prima facie*, it appears that the applicant was moving the towel containing the stone as a slingshot. The question as to whether the applicant intended to cause hurt to the first informant may warrant consideration.

7. It is true, the Medical Officer has designated the injury as grievous. However, whether the weapon allegedly used by the applicant would satisfy the description of the weapon falling within the ambit of Section 326 of the Penal Code would be a matter for adjudication.

8. Having regard to the nature of the occurrence and injury sustained by the first informant, and the relationship between the parties, in my view, the applicant deserves the exercise of the discretion.

9. So far as the recovery of the weapon of assault, a direction to the accused to appear before the Investigating Officer may serve the purpose as the appearance of an accused before the Investigating Officer amounts to, “deemed custody” for the purpose of Section 27 of the Indian Evidence Act.

10. The applicant appears to have a permanent place of abode. Possibility of fleeing away from justice appears to be remote.

11. Hence the following order:

: O R D E R :

- (i) In the event of arrest of the applicant in CR No.531 of 2023, registered with Vita Police Station, Sangli, 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 Vita Police Station on 19th 20th and 21st 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.]