

Santosh

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

**ANTICIPATORY BAIL APPLICATION NO. 3488 OF 2023**

SANTOSH  
SUBHASH  
KULKARNI

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Date: 2023.12.21  
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1. Mohd. Yaseen Mohd. Muslim Siddiqui  
2. Mohd. Mohsin Mohd. Muslim Siddiqui                      ...Applicants  
**Versus**  
The State of Maharashtra                                              ...Respondent

Mr. Hasan Sayed, i/b R. A. Shaikh, for the Applicants.  
Smt. Ashwini Takalkar, APP for the State/Respondent.  
API Santosh Borate, Bhiwandi Taluka Police Station,  
present.

**CORAM: N. J. JAMADAR, J.**  
**DATED: 18<sup>th</sup> DECEMBER, 2023**

**ORDER:-**

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 CR No.602 of 2023, registered with Bhiwandi Taluka Police Station, Thane Rural, for the offences punishable under Sections 326 and 506 read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code").
3. The applicants are the brothers-in-law of the first informant. There has been matrimonial discord between the first informant and his wife, who has lodged a report against the first informant and his relatives for the offences

punishable under Sections 324, 143, 147, 149, 323, 504 and 506 of the Penal Code on 5<sup>th</sup> October, 2023.

4. In the wake of the matrimonial dispute, the first informant alleged that on 2<sup>nd</sup> November, 2023 at about 11.00 pm. while he was pillion riding a motorcycle driven by his friend Mubarak Abdulla Samani, in front of Dasterkhan Dhaba, co-accused Md. Muslim Siddiqui, the brother-in-law of the first informant, pulled him from the motorcycle. The first informant fell down. Thereupon, the applicants caught hold of the first informant and assaulted him by means of fist and kick blows. The applicants brother Mohammed Siddiqui, the co-accused assaulted the first informant by means of an iron rod on his head, right hand and legs.

5. The learned Counsel for the applicants submitted that the applicants have been falsely roped in on account of matrimonial dispute between the first informant and his wife, who is the sister of the applicants. It was submitted that the FIR is lodged as a counterblast to the FIR lodged by their sister. At any rate, the role attributed to the applicants is that of assaulting the first informant by means of fist and kick blows. Therefore an offence punishable under Section 326 of the Penal Code cannot be said to have been *prima*

*facie* made out against the applicants. Hence, they deserve the exercise of the discretion.

6. The learned APP countered the submissions on behalf of the applicants. It was submitted that the first informant had sustained multiple injuries. The first informant was assaulted in furtherance of common intention of the accused. There is direct evidence against the applicants. Medical evidence lends credence to the version of the first informant. In the circumstances, they do not deserve the exercise of the discretion.

7. I have perused the allegations in the FIR. It is true the role attributed to the applicants is that of catching hold of the first informant and assaulting him by means of fist and kick blows. When an accused is sought to be roped in by invoking the principle of constructive criminality either under Section 34 or Section 149 of the Penal Code, the material is required to be scrutinized more carefully in the light of the allegations so that personal liberty is not jeopardised.

8. In the case at hand, it is pertinent to note that the injury certificate issued by Indira Gandhi Memorial Hospital, Bhiwandi, lends support to the claim of the first informant. As many as 15 injuries were noted by the Medical Officer, out

of those injuries, five injuries have been designated as grievous and one dangerous. The injury certificate further reveals that the first informant suffered fracture of right fibula, right tibia, proximal right fibula, right humerus and nasal bone. The City Scan revealed that the first informant had suffered fronto parietal scalp hematoma.

9. The injury certificate, *prima facie*, indicates that the first informant suffered multiple grievous nay life threatening injuries. The injury on the head by means of a dangerous weapon like iron rod can be said to have endangered the life of the first informant. In the circumstances, a very strong *prima facie* case for an offence under Section 326 of the Penal Code can be said to have been made out.

10. In the aforesaid view of the matter, the submissions that the applicants had assaulted the first informant by means of kick and fist blows only and, therefore, they deserve the exercise the discretion, does not merit acceptance. On the contrary, it appears that the attack was pre-mediated. The incident occurred at about 11.00 pm. Apparently, there was no sudden provocation. In fact, the first informant was pulled off a motorcycle and then assaulted by the three brothers in furtherance of their

common intention. 15 injuries on the person of the first informant cannot be brushed aside as a result of altercation leading to a fight. The principal assailant is stated to be still at large.

11. In the totality of the circumstances, this is not a fit case to exercise the discretion in favour of the applicants.

12. Hence the following order:

**: O R D E R :**

- (i) Application stands rejected.
- (ii) It is clarified that these *prima facie* observations are confined to determine entitlement to pre-arrest bail only.

**[N. J. JAMADAR, J.]**