

Sayali Upasani

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

ANTICIPATORY BAIL APPLICATION NO. 3513 OF 2023

Suresh Ganpat Karekar and Others ...Applicants

Vs.

The State of Maharashtra ...Respondent

Mr. Jaywant R. Avhad, for Applicant.

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

Mr. Kumar Soutade, PSI, Dindoshi Police Station, Present.

CORAM:- N. J. JAMADAR, J.

DATED:- 18th DECEMBER, 2023

P.C:-

- 1) Heard the learned Counsel for the applicants and the learned APP for the State.
- 2) This application is preferred for pre-arrest bail in connection with C.R. No. 803 of 2023, registered with Dindhoshi Police Station, Mumbai, for the offences punishable under Section 323, 324, 326, 506 read with Section 34 of Indian Penal Code, 1860 ("the Penal Code").

3) The first informant lodged a report with the allegations that on 8th November, 2023, the applicant and co-accused started to intimidate the persons, who were working at Khadakpada. The first informant's friend was with them. Co-accused – Mubarak Saiyyed assaulted him by means of a cement block and he sustained a grievous injury on head. Co-accused Anish Mohammad Shaikh also assaulted him and injured Arbaj alias Abhivakas Malik by means of an iron rod. The applicant allegedly gave fist and kick blows to the first informant's friends Salim Khan, Noor Shaikh and Firoz Ansari.

4) The learned Counsel for the applicants submitted that co-accused – Mubarak had lodged FIR in respect of the very same occurrence vide CR No. 801 of 2023, prior in point of time. It was further submitted that even if the allegations are taken at par, an offence punishable under Section 326 of the Penal Code cannot be said to be prima facie made out against the applicant.

5) The learned APP resisted the prayer for pre-arrest bail. It was submitted that injuries were caused in furtherance of the common intention of the applicant and co-accused. I have perused the allegations in FIR. Prima facie, assault by means of cement block and iron rod have been attributed to co-accused

Mubarak and Bhimashankar. The role attributed to the applicant No. 1 is that of assaulting the first informant's friends Salim Khan, Noor Shaikh and Firoz Ansari by means of fist and kick blows. The applicant No. 2 - Khwaja Sayyed had allegedly assaulted Salim by fist blows. It appears that there was an altercation between two groups which resulted in a free fight.

6) As the applicants were admittedly neither armed with, nor assaulted the members of the other group by means of any weapon, a prima facie case is made out qua the applicants.

7) Hence, the following order:-

ORDER

I) In the event of arrest of the applicants in connection with C.R. No. 803 of 2023, registered with Dindhoshi Police Station, Mumbai, for the offences punishable under Section 323, 324, 326, 506 read with Section 34 of Indian Penal Code, 1860, the applicants be released on bail on executing a PR Bond in the sum of Rs.30,000/- each, with one or two sureties in the like amount.

- II)** The applicants shall co-operate with the investigation and attend Dindhoshi Police Station, Mumbai on 27th and 28th December, 2023 in between 10.00 am to 1.00 pm and, thereafter, as and when directed by the Investigating Officer.
- III)** The applicants shall not tamper with the prosecution evidence and/or give threat or inducement to the first informant and 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.]