

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

ANTICIPATORY BAIL APPLICATION NO. 3615 OF 2023

SANTOSH
SUBHASH
KULKARNI

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Date: 2023.12.22
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Mitesh Sanjay Vitkar ...Applicant

Versus

The State of Maharashtra ...Respondent

Ms. Kusum Pandey, a/w Pragati Mishra and Pooja Nalawade,
for the Applicant.

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

ASI P. M. Khedekar, Vakola Police Station, present.

CORAM: N. J. JAMADAR, J.

DATED: 22nd 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.983 of 2023, registered with Wakola Police Station, Mumbai, for the offences punishable under Sections 341, 506(2) and 504 of Indian Penal Code, 1860 ("the Penal Code"), Sections 4 and 25 of the Arms Act, 1959 and Section 37(1) of Maharashtra Police Act, 1951.

3. The indictment against the applicant is that on 11th November, 2023 the applicant, his brother Sahil and another co-accused Sharad had abused and intimidated the first

informant and his brother Sujit by brandishing sword and knife. The applicant and co-accused allegedly assaulted the persons who tried to intervene.

4. The learned Counsel for the applicant submitted that co-accused Sahil and Sharad were arrested and have since been released on bail. The initial allegation against the applicant was that of brandishing a button knife. After the first occurrence, the applicant had left the said spot and he has been falsely roped in.

5. The learned APP resisted the prayer for pre-arrest bail. It was submitted that there is a specific allegation against the applicant that at the time of the alleged occurrence the applicant had a sword.

6. I have perused the allegations in the FIR. It seems that the alleged incident of insult and intimidation occurred in two stages. In the first part, the applicant was allegedly armed with button knife and in the second part, the applicant allegedly had a sword.

7. Prima facie, the applicant was initially armed with a button knife. Subsequently, the applicant, allegedly, brandished a sword. In any event, having regard to the

nature of the accusation, the custodial interrogation of the applicant does not seem to be warranted. It does not appear that the applicant and co-accused had assaulted either the first informant or any other person in the alleged occurrence. Thus, a direction to the applicant to appear before the Investigating Officer may also serve the purpose of recovery of the alleged weapon with which the applicant was allegedly armed, as it would amount to deemed custody for the purpose of Section 27 of the Indian Evidence Act.

8. Hence the following order:

: O R D E R :

- (i) In the event of arrest of the applicant in CR No.983 of 2023, registered with Wakola Police Station, Mumbai, 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 Wakola Police Station on 5th 6th and 8th, January, 2024 in between 10.00 am. to 1.00 pm. and, thereafter, as and when directed.

- (iii) The appearance of the applicant before the Investigating Officer shall amount deemed custody for the purpose of Section 27 of the Indian Evidence Act.
- (iv) 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) 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.]