

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 246 OF 2024

Mahesh @ Mayur Ghone	...Applicant
vs.	
The State of Maharashtra	...Respondent

Mr. Sachin Kanse a/w. Jyoti Ghorpade a/w. Jyoti Ghorpade a/w.
Aditya Pawar, for the Applicant
Mr. Tanveer Khan, APP, for the Respondent/State.
API S.B. Gatkai, Daund Police Station, Pune (Rural).

CORAM : N. J. JAMADAR, J.
DATE : MARCH 26, 2024

P.C.:

1. Heard the learned counsel for the applicant and the learned APP for the State.
2. This application is preferred seeking pre-arrest bail in connection with C.R. No. 386 of 2023, registered with Daund Police Station, for the offences punishable under Sections 143, 147, 148, 149, 307, 329, 354, 452, 427, 504 and 506 of Indian Penal Code, 1860.
3. At the outset, the learned counsel for the applicant submits that this Court has granted pre-arrest bail to 9 accused by Orders dated 12th October, 2023 and 7th November, 2023. The role attributed to the Applicant is relatively minor. He invites attention of the Court to the FIR, wherein it is alleged

that the applicant had assaulted Sufiyan Shaikh by means of an iron rod. The learned counsel for the applicant submitted that the applicant deserves pre-arrest bail as Sufiyan had sustained simple injuries, which have also been noted by this Court in the order dated 12th October, 2024.

4. The learned APP, on the other hand, submitted that the applicant had also assaulted injured Sufiyan. The sword, which was used in the commission of the offences, is yet to be recovered. The applicant also has antecedent, as he was arraigned in CR No. 209/2018 registered with Daund Police Station for the offences of rioting and attempt to commit murder. Therefore, the applicant does not deserve pre-arrest bail.

5. I have perused the allegations of the FIR. Apart from the general allegation that the applicant was a member of the unlawful assembly and in prosecution of the common object of the unlawful assembly, rioting armed with deadly weapons, attempt to commit the murder of the injured and other offences were committed, the role attributed to the applicant seems to be that of assaulting Sofiyan by means of an iron rod. I have perused the injury certificate of Sofiyan. Prima facie, it appears that Sufiyan had sustained two simple injuries.

6. This Court was persuaded to grant pre-arrest bail to the co-accused by Order dated 12th October, 2023. The observations in paragraphs 12 to 18 of the said order read as under:

“12. Evidently, in respect of one and the same occurrence two versions have been reported. Interestingly, in both the matters the first information report was lodged by a lady and prelude to assault is the attempt to outrage the modesty of the first informant lady. The informant in both the crimes claimed to have rushed to the safety of their respective houses. They were followed by the members of the accused party armed with deadly weapons, and the resultant assault on the first informant and her relatives.

13. From the material on record, it prima facie appears that it was a case of free fight between two groups, having a communal overtone.

14. Undoubtedly, the instant first information report came to be registered at a later point of time pursuant to the directions of the learned Magistrate under section 156(3) of the Code of Criminal Procedure, 1973. The first information report No. 547 of 2022 was registered on 9th November, 2022 wherein role of assault by means of deadly weapons was attributed to the injured herein. The two FIRs thus represent a case and a cross-case. In a case of this nature, where the members of two groups indulge in a free fight and sustain injuries in the occurrence, the question as to whether each of the members of the respective unlawful assemblies, shared the common object or knew that the offences were likely to be committed in prosecution of the said common object, becomes critical and warrants adjudication.

15. In the case at hand, there is an interval of time between the date of occurrence and the lodging of first information report No. 547 of 2022. The complainant, it seems, came to be lodged after the complainant's report was not allegedly recorded. Prima facie, however, there is material to indicate that the injured Iliyas and Sufiyan were initially taken to the Sub-District Hospital, Daund and thereafter to private hospital and a history of assault by known persons was narrated. The injury certificates reveal that Iliyas had suffered a grievous hurt on fronto temporal region and two simple injuries on

occipito region. The injured Sufiyan had sustained two simple injuries on frontal area and the chest.

16. In the backdrop of the aforesaid nature of the injuries if the allegations in the FIR are considered, it prima facie, appears that the role of assault by deadly weapons has been attributed to a number of accused. Prima facie, it appears that Iliyas suffered grievous hurt and two simple injuries. Assault to Iliyas is attributed to a number of accused, including applicants Gorakh Gholap, Shrinath Nanaware and Deepak Kamble apart from the co-accused Mahesh Ghone, Kunal Gholap and Babu Jamdade. Since one of the injuries appears to be grievous, at this stage, it appears to be difficult to attribute the said grievous injury to the particular accused. None of the applicants has been attributed with the role of assault to Sufiyan specifically. The injury on frontal area suffered by Sufiyan appears to be, prima facie, attributable to co-accused Mahesh Gupta.

17. In the backdrop of free fight, where the injured herein have been accused in C.R. No. 547 of 2022, prima facie, the applicants can be said to have furnished a version which competes in probability and reported much prior in point of time.

18. I am, therefore, inclined to exercise the discretion in favour of the applicants.”

6. The aforesaid reasons, which weighed with this Court in granting pre-arrest bail to the co-accused apply to the case of the applicant and, therefore, I am inclined to allow this application.

7. Hence, the following order.

ORDER

I] In the event of arrest of the applicant in connection with C.R. No. 386 of 2023, registered with Daund Police Station, for the offences punishable under Sections

143,147, 148, 149, 307, 329, 354, 452, 427, 504 and 506 of Indian Penal Code, 1860, the applicant 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 applicant shall cooperate with the investigation and attend Daund police station, on first Monday of every month between 10.00 am to 12.00 noon for a period of Nine months from today.

III) The applicant 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.)