

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

ANTICIPATORY BAIL APPLICATION NO.253 OF 2024

Shabbir Kambar Irani Applicant
Versus
The State of Maharashtra Respondent

Mr. Rahul Arote, Advocate for the Applicant.
Smt. M.H. Mhatre, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 31st JANUARY, 2024

PC. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.124/2023 registered at Khadki Police Station, Pune City on 22.4.2023 under sections 307, 324, 323, 504, 143, 147, 148, 149 of IPC, under Sections 37 and 135 of the Maharashtra Police Act and under Section 7 of the Criminal Amendment Ordinance Act.

2. Heard Mr. Rahul Arote, learned counsel for the Applicant and Smt. M.H. Mhatre, learned APP for the Respondent-State.

3. The FIR is lodged by one Kulsum Shaikh. She has stated that she was residing at Shivaji Nagar. Her aunt Ruksana

had lodged complaints against Nadar Irani and his group. Some of them were arrested in that connection, but, they were released on bail. Since then they were holding grudge against the informant's family and friends. The incident in question took place on 21.4.2023 at about 10.30 p.m. At that time, the other group came to assault them. The informant and others went to their relative Bilal's house to hide themselves. The Applicant's group came there. The Applicant is specifically named as one of the assailants. It is alleged that the Applicant was holding a sword. The others were having sickle, rod, glass bottles, stones etc.. They entered Bilal's house and assaulted the informant, her mother, her brother Ali Aksar, Kasim Humayun Irani, Abul Hasan Humayun Irani, Abujhar Firoz Irani and Muktar Mohammad Irani. It is specifically mentioned that the Applicant tried to assault Aksar but the informant intervened and in the process suffered injury on her left hand. The others in the locality got scared. The peoples on the street ran helter skelter. After some time, the police reached there and the assailants ran away. On this basis the FIR is lodged.

4. Learned counsel for the Applicant submitted that the description in the FIR is not correct. In fact Jainnab from the Applicant's group had lodged her own FIR vide C.R. No.123/2023 at the same Khadki police station. It was lodged at the earlier point of time under Sections 307, 354, 324 of IPC and other sections. He, therefore, submitted that the FIR against the Applicant is false. He further submitted that the first informant Kulsum in this case is not available. There is no injury certificate in respect of her injuries. The Applicant was attributed the specific role of causing injury to the first informant and since she is not available his role cannot be defined. He, therefore, submitted that the Applicant's custodial interrogation is not necessary.

5. Learned APP relied on the injury certificates in respect of the injuries suffered by the injured from the informant Kulsum's group. Out of them, Ali Yakub had suffered one simple injury on the head and one grievous injury causing comminuted displaced fracture of the nose, Kasim Hamja had suffered two grievous injuries on the head causing undisplaced fracture. The injured Abuzar had suffered one grievous on the

forehead causing linear undisplaced fracture of the occipital bone. All these injuries are grievous and serious.

6. All the accused, including the present Applicant, had entered the informant's relative Bilal's house. They were the aggressors. They were carrying the weapons. All the other Sections i.e. sections 143, 147, 148, 149 of IPC are also attracted besides the main section of 307 of IPC.

7. Though the informant is not available and her injury cannot be ascertained, there are other injured who were assaulted in the same incident.

8. The Applicant was part of the unlawful assembly. He was carrying a sword. Therefore, his role is established in the FIR itself. Considering this background, the Applicant cannot be protected under Section 438 of Cr.P.C.. The Application is rejected.

(SARANG V. KOTWAL, J.)

Deshmane (PS)

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