

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

ANTICIPATORY BAIL APPLICATION NO. 496 OF 2024

Mohammed Moin Khapatwala

..Applicant

Versus

The State of Maharashtra

..Respondent

Mr. Sandeep D. Sherkhane for Applicant.

Mr. C. D. Mali, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 21 FEBRUARY 2024

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.1130 of 2023 registered at Amboli Police Station, Mumbai, on 19.12.2023, under sections 326, 504 and 506 r/w. 34 of the Indian Penal Code.

2. Heard Mr. Sandeep Sherkhane, learned counsel for the applicant and Mr. Mali, learned APP for the State.

3. The F.I.R. is lodged by one Salman Lochur. He has stated that, his mother and one Atif's mother were on inimical terms. On 19.12.2023, at 9.30a.m. Atif called the informant to

come near Shivshakti tower. The informant went there. At that time, he saw Atif and the present applicant standing there. The informant told Atif that they should not quarrel and they should settle their dispute. Atif did not agree. Atif pushed him. The applicant and one Iqbal assaulted him with kicks and fist blows. He started running away. Atif chased him with a bamboo in his hand. Iqbal also chased him with an iron rod in his hand. The informant stopped in front of Khushi Sports. At that time, Atif and Iqbal assaulted him with their weapons. One of the passers by helped him and took him to the hospital. After that the F.I.R. was lodged.

4. Learned counsel for the applicant submitted that the applicant has not played any role in assaulting the first informant. In fact, the applicant had tried to separate the quarrel and fight. The applicant was merely standing there. He was trying to pacify both the sides. He submitted that the incident is captured in the CCTV footage which can be verified by the investigating agency. He further submitted that Atif himself has lodged his own F.I.R. at the same police station vide the C.R.No.1136 of 2023 on

19.12.2023, at 9.42p.m. under section 324 of the I.P.C. against the present first informant Salman. He submitted that the allegations in the F.I.R. are not true.

5. Learned APP produced the investigation papers before me. There is a statement of one Sanjay Mishra who had helped the injured informant and had taken him to the hospital. This witness, however, has seen only the two persons who had assaulted the first informant.

6. I have considered these submissions and I have perused the investigation papers. The statement of Sanjay Mishra does not help the prosecution case because he himself had seen only two accused assaulting the first informant. The first informant himself has attributed the role of assault with weapons only to the applicant's co-accused Atif and Iqbal. The applicant was attributed a role of giving fist and kicks blows in the first part of the incident, but he had not chased the informant and thereafter he had not assaulted the informant. In this case, the applicant's role can be separated from that of his co-accused. The medical certificate

shows that, there were two fractures on the left elbow and left forearm of the informant. There was one head injury. These three injuries were described as grievous injuries. However, all these injuries are ascribed to the co-accused and not to the present applicant. The applicant's role is different. Considering these aspects, the applicant can be protected U/s.438 of the Cr.p.c.

7. Hence, the following order :

ORDER

- i) In the event of his arrest in connection with C.R.No.1130 of 2023 registered at Amboli Police Station, Mumbai, the applicant is directed to be released on bail on his executing P R. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- ii) The Application is disposed of.

(SARANG V. KOTWAL, J.)