

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 473 OF 2024

1. Mohammed Farhan Mohamed Shaikh
@ Musharif Shaikh
2. Mohammad Rehan Mohammad Naeem Shaikh
3. Mohammad Javed Nasir Ahmed Shaikh @ Papa
4. Abdulla Nazar Mohammad Shaikh
@ Jymai Shaikh

.... Applicants

Versus
The State of Maharashtra

.... Respondent

Mr. D.G. Gujral, for the applicants.
Mr. C.D. Mali, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 20th FEBRUARY, 2024

P.C. :

1. The applicants are seeking anticipatory bail in connection with C.R. No. 32 of 2024 registered at R.A.Kidwai Marg Police Station, Mumbai on 25/01/2024 under sections 326, 504, 506 r/w 34 of the Indian Penal Code.

2. The FIR is lodged by one Mohammed Mustafa. He has

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1 of 5

stated that on 22/01/2024, there was a matrimonial dispute between the informant's son Afzal and his wife. Afzal's in laws had come to their house to settle the issue. Afzal was suspecting that one Nasim was instigating his father- in-law and therefore there was quarrel between Afzal and Nasim. On 23/01/2024, at about 9.00 a.m., Nasim's brother i.e. accused no. 4 came to the informant's house and started abusing him. At that time, Nasim's son, Mohammed Farhan Mohamed Shaikh @ Musharif Shaikh i.e. Applicant No. 1, Nasim's nephew Rehan Mohammad Naeem Shaikh i.e. Applicant No. 2, Nasim's other nephew Mohammad Javed Nasir Ahmed Shaikh @ Papa i.e. Applicant no. 3 came there. It is alleged that they started abusing the informant. Musharif gave a blow with bamboo on his head. Rehan gave a blow on the informant's left hand with bamboo. Thereafter, all of them went away.

3. Learned counsel for the Applicants submitted that the incident described in the FIR is not true. In fact, in that incident, the applicant's side including the Applicant Farhan was the victim.

He had suffered injury. He submitted that Nasim has lodged his own FIR vide C.R. No. 30 of 2024 at the same Police Station. In that FIR the incident is correctly described. He submitted that no grievous injury is caused to the informant's side and hence the applicants custodial interrogation is not necessary.

4. Learned APP relied on the FIR and also on medical the papers of the injured informant.

5. I have considered these submissions and I have perused the medical certificates. The medical certificate of the injured mentions that he had suffered one simple laceration on his right forehead of 3 cm x 3 cm and there was swelling of 7 cm x 8 cm on his forearm and wrist. All these injuries were described as simple injuries. However, the informant's medical papers from the hospital which are placed before me mentioned that there was undisplaced comminuted fracture of left hand. Thus the informant has suffered fracture which would attract Section 326 of the I.P.C. That injury is specifically attributed to the applicant Rehan.

From the description of the incident, it is clear that the incident had taken place at the spur of the moment and quarrel started between the Applicant No.4 and the informant. The others came there subsequently. Therefore, at this stage there is substance in the submission that there was no premeditation. Roles of the applicants can be separated. Role of causing fracture is only attributed to Rehan. The others had come there after the quarrel had started and they have not caused any grievous injuries. Therefore, Rehan's case can be separated. Since Rehan is attributed with the role of causing fracture, I am not inclined to protect him under Section 438 of Cr.P.C. However, that benefit can be granted to the other Applicants. Hence the following order.

ORDER

- (i) Application made on behalf of the Applicant No.2 Rehan is rejected.
- (ii) In the event of their arrest in connection with C.R. No. 32 of 2014 registered at R.A.Kidwai Marg Police Station, Mumbai the Applicant No.1 Mohammed Farhan Mohamed Shaikh @

Musharif Shaikh, Applicant No. 3 Mohammad Javed Nasir Ahmed Shaikh @ Papa, and Applicant No.4 Abdulla Nazar Mohammad Shaikh, are directed to be released on bail on their furnishing PR bonds in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) each with one or two sureties in the like amount each.

- (iii) The Applicants shall co-operate with the investigation.
- (iv) The Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)