

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

ANTICIPATORY BAIL APPLICATION NO.541 OF 2024

Amarjit Singh Kulwant Singh Sandhu Applicant
Versus
The State of Maharashtra & Anr. Respondents

....

WITH

INTERIM APPLICATION NO.765 OF 2024

IN

ANTICIPATORY BAIL APPLICATION NO.541 OF 2024

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WITH

ANTICIPATORY BAIL APPLICATION NO.542 OF 2024

Hariyot Singh Amarjit Singh Sandhu Applicant
Versus
The State of Maharashtra & Anr. Respondents

....

WITH

INTERIM APPLICATION NO.788 OF 2024

IN

ANTICIPATORY BAIL APPLICATION NO.542 OF 2024

Ms. Saveena Tejpal Bedi, Advocate for the Applicants in both ABAs.

Mr. Shyam K. Singh, Advocate for the Intervenor in both IAs.

Ms. Mahalakshmi Ganapathy, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 27th FEBRUARY, 2024

P.C. :

1. Both these Applications are decided by this common order because they arise out of the same registered offence.

2. The Applicants are seeking anticipatory bail in connection with C.R.No.697/2023 registered at Mulund (West) police station, Mumbai dated 11.12.2023. Initially the offence was registered under sections 324, 323, 504 read with 34 of IPC.

3. Heard Ms. Saveena Tejpal Bedi, learned counsel for the Applicants in both ABAs, Mr. Shyam Singh, learned counsel for the Intervenor in both IAs and Ms. Mahalakshmi Ganapathy, learned APP for the Respondent-State.

4. The FIR is lodged by Nirmal Singh Kahlon. He has stated that he had quarrel with the Applicants Amarjit Singh and Harjyot Singh. The cause of their quarrel was some dispute about the Gurdwara Committee. About 15 days prior

to the incident, there was a quarrel between Avtar Singh Sandhu and the Applicant Amarjit Singh. On 10.12.2023, the first informant was sitting near the pipeline bridge Mulund Colony, Mumbai with his friends. At that time, the Applicants Amarjit Singh and Harjyot Singh along with another accused Sarabjeet Singh came there in a four-wheeler. They got down. Sarabjeet Singh started abusing the informant. It is alleged that the Applicants assaulted the informant with their hands. All the three accused also assaulted him with fist and kick blows. The Applicant Harjyot Singh took out *kirpan* and gave it to Sarabjeet Singh who tried to give a blow on the informant's head, but, in the process there was an injury to the left hand little finger of the informant. It was a bleeding injury. After that the informant's friends intervened and he was taken for medical treatment. On this basis, the FIR is lodged.

5. Learned counsel for the Applicants submitted that the allegations in the FIR are not true. There was a quarrel in which the Applicant Amarjit Singh's brother Sarabjeet Singh was assaulted. For that the Applicant Amarjit Singh has

lodged his own FIR vide C.R. No.698/2023 at the same police station under Section 324 and other Sections of IPC. She submitted that the offence under section 326 of IPC is not made out against the Applicants.

6. Learned APP as well as learned counsel for the intervenor – informant opposed these submissions. They submitted that the supplementary statement of the informant and the statements of the eye witnesses show that a wooden stick was used in assaulting the informant causing the rib fracture. Learned APP produced the medical papers and the statements of the eye witnesses before me.

7. I have considered these submissions. The first informant has suffered the following three injuries:

- (i) CLW on left little finger of the size 10 cm x 2 cm x 1 cm. It was described as a simple injury.
- (ii) Abrasions on right elbow. It was a simple injury.
- (iii) Blunt trauma on right side of chest causing fracture of line-3 rib. It is described as grievous injury.

8. As against that Sarabjeet Singh had suffered two minor abrasions and one blunt trauma on the chest. Therefore, it is quite clear that there was a free fight between the two groups. The question is whether the offence under section 326 of IPC is made out or not. As far as the FIR is concerned, there is no mention of any wooden stick. The informant has given his supplementary statement on 14.12.2023 wherein he has mentioned that the Applicant Harjyot brought the wooden stick from a vehicle and assaulted him with that wooden stick.

9. There are statements of eye witnesses Swaran Singh and Major Singh, which were recorded on 13.12.2023. Both of them have stated that the Applicant Harjyot had assaulted the informant with a wooden stick which he had brought from the vehicle. Similar is the statement of Avatar Singh. These eye witnesses have given their statements belatedly. Avtar Singh's statement is recorded on 19.12.2023.

10. Another eye witness Gurmeet, who has narrated the incident in the same manner and had attributed use of a

wooden stick to Harjyot, has given his statement on 19.12.2023. Similar is the case of another eye witness Sikandar Singh. The theory of using a wooden stick is developed subsequently. The FIR is lodged by the injured informant himself. He has not referred to any wooden stick. He has specifically stated that both these Applicants assaulted him with fist and kick blows. Therefore, even if the rib fracture is caused, the offence will be under section 325 of IPC and not under Section 326 of IPC.

11. The injury certificate shows that there was blunt trauma on the chest which is in consonance with the theory of assault with kick and fist blows. There were no marks on the chest caused by a stick. Therefore, sufficient doubt is created regarding applicability of Section 326 of IPC. In this view of the matter, the Applicants deserve protection under Section 438 of Cr.P.C.

12. Hence, the following order :

ORDER

- (i) In the event of their arrest in connection with C.R.No.697/2023 registered at Mulund (West) police station, Mumbai, the applicants are directed to be released on bail on their furnishing PR bonds in the sum of Rs.30,000/- each (Rupees Thirty Thousand Only) with one or two sureties each in the like amount.
- (ii) The Applicants shall cooperate with the investigation.
- (iii) Anticipatory Bail Applications stand disposed of accordingly. With disposal of the Anticipatory Bail Applications, the intervention applications are also disposed of.

Digitally signed
by
PRADIPKUMAR
PRAKASHRAO
DESHMANE
Date:
2024.02.29
19:24:47 +0530

(SARANG V. KOTWAL, J.)

Deshmane (PS)