

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.707 OF 2024

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Selvaraj Yenmani Devendra @ Abu ...Applicant
vs.
The State of Maharashtra ...Respondent

Mr. Rahul Arote, for the Applicant
Mr. Tanveer Khan, APP, for the Respondent/State.

CORAM : N. J. JAMADAR, J.
DATE : MARCH 20, 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. 143 of 2023 registered at Juhu police station for the offences punishable under sections 307, 326, 323, 504, 506, 147, 148 and 149 of Indian penal Code, 1860.
3. On the night intervening 19th and 20th February, 2023 at about 2.30 am Parmesh Devendra (the first informant) was on his way to home along with cousin Kuppa Devendra. When they reached near Laxmi Chawl, Nehru Nagar, Vileparle (w), Mumbai, the applicant and co-accused Satish, Suraj and Kisan were having drinks on the road. Co-accused Satish called the first informant's cousin Kuppa. An altercation ensued between Satish and Kuppa.

Satish caught hold of Kuppa and started to drag him towards Satish's home. Satish exhorted a child in conflict with law to bring the weapon to eliminate the first informant and Kuppa. The child in conflict with law and co-accused Suraj returned armed with scythe. Initially Satish and Suraj gave blow by means of scythe on the head of Kuppa. When Shital, the wife of Kuppa, came thereat, Satish gave a blow by means of scythe on the hand of Shital. Geeta, a sister of Satish also joined the assailants, and assaulted Shital. The applicant and the co-accused took the injured Kuppa towards Pujari chawl and assaulted him by means of fist and kick blows. Siddique, the brother of Kuppa tried to intervene. He was also assaulted by means of scythe. Siddique sustained an injury on his thigh. The first informant called the police. Thereupon the applicant and the co-accused fled away.

4. Mr. Arote, the learned counsel for the applicant, submitted that the allegation against the applicant is that he assaulted Kuppa by means of fist and kick blows. The applicant was not armed with any weapon. Thus, the applicant cannot be said to have shared common object to commit offence of attempt to commit murder. Therefore, the applicant deserves pre-arrest bail.

5. Mr. Khan, the learned APP resisted the prayer for bail.

6. I have perused the allegations in the FIR carefully. The

material on record indicates that as many as three persons were assaulted by the members of the unlawful assembly armed with scythe. What exacerbates the situation is the fact that after the initial altercation, the co-accused Satish exhorted the child in conflict with law to bring the weapon and after the said child in conflict with law brought the weapon, co-accused Satish and Suraj unleashed blows on Kuppa. As many as three persons were assaulted by means of deadly weapons.

7. It is trite law that the assembly which is lawful initially may turn unlawful. The common object can develop in the spur of the moment also. Moreover, there is material to indicate that after the injured Kuppa sustained injuries, the applicant and co-accused dragged injured towards Pujari chawl and assaulted him by means of fist and kick blows. Evidently, there was an overt act on the part of the applicant also, which reflects that the applicant was also prima facie animated by the common object of the unlawful assembly. Therefore, at this stage, it would be difficult to accede to the submission that the applicant was not animated with the common object of the unlawful assembly.

8. In the aforesaid view of the matter, the custodial interrogation of the applicant appears indispensable for an effective investigation. I am, therefore, not persuaded to exercise the

discretion in favour of the applicant.

ORDER

- 1] The application stands rejected.
- 2] It is clarified that these prima facie observations are confined to determine entitlement to pre-arrest bail only.

(N. J. JAMADAR, J.)