

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

ANTICIPATORY BAIL APPLICATION NO. 987 OF 2024

Kunal Jai Singh ..Applicant

Versus

The State of Maharashtra ..Respondent

Mr. Mahesh M. Funde for Applicant.

Ms. Poonam P. Bhosale, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 12 APRIL 2024

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.778 of 2023 registered at Kalyan Taluka Police Station, Thane Rural, on 30.12.2023, under sections 323, 324, 504 and 506 r/w. 34 of the Indian Penal Code. Subsequently, on 18.01.2024, Section 326 of the I.P.C. was added because the medical certificate showed that there was a fracture below the right eye of the informant.

2. Heard Mr. Mahesh Funde, learned counsel for the

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applicant and Ms. Poonam Bhosale, learned APP for the State.

3. The F.I.R. is lodged by one Girish Bhatia. He has stated that on 30.12.2023, at about 1:30a.m. in the midnight, he was going back from Mohan Meadows Lawns, Varap gaon, Tal. Kalyan, District Thane, after attending his brother's son's engagement ceremony. He saw that, there was a crowd in the parking lot. He went there. He saw that, his friend Jitendra Kariya was intervening in a quarrel. Jitendra told him that, the driver of one car bearing No.MH04/EF/9959 had driven the car carelessly in reverse gear and the car was taken on the foot of one Komal Kubani. When the driver was told to be careful, he got angry and brought 3-4 persons. Those persons started beating the informant with kicks and fist blows; causing injury to the informant's right eye. Even one Jatin was also assaulted.

4. Learned counsel for the applicant submitted that, initially, F.I.R. was lodged U/s.324 of the I.P.C. and only after about 18 days as an afterthought Section 326 of the I.P.C. was added. He submitted that, even otherwise, Section 326 of the I.P.C. is not

attracted as no weapon was used. Section 325 of the I.P.C. is a bailable offence. Therefore, the applicant cannot be denied bail in this case.

5. Learned APP opposed these submissions and produced the investigation papers before me. However, she could not explain as to how Section 326 of the I.P.C. was applied, though, there was no mention of any weapon attributed to any of the accused.

6. I have considered these submissions. There are statements of Jitendra Kariya, Jatin Ahuja, Komal Kubani and Krish Kubani. All of them have narrated the incident in the same manner as is narrated by the informant. The medical certificate of the informant shows that, there was internal hemorrhage in the right eye, there was contusion around the right eye, and there were contusions on the neck and on the forehead. Except the injury to the right eye, the other injuries were described as simple injuries. Jatin had suffered two contusions; one on the left eye and other on the chest. They were described as simple injuries. However, the medical certificate issued by Hiranandani Hospital shows that,

there was evidence of fracture of right frontal process of maxilla. Therefore, the injury was grievous. The medical certificate and the statements of the eye witnesses show that the incident had taken place, but the correct section would be Section 325 of the I.P.C. i.e. voluntarily causing grievous hurt. But no weapon mentioned U/s.326 of the I.P.C. was used by any of the accused-assailants, therefore, Section 326 of the I.P.C. may not be applicable. Section 325 of the I.P.C. is bailable. In this view of the matter, the applicant can not be denied the protection of anticipatory bail order. However, looking at the manner in which grievous injury was caused; in the background of the case, some conditions are required to be imposed on the applicant.

7. Hence, the following order :

ORDER

- i) In the event of his arrest in connection with C.R.No.778 of 2023 registered at Kalyan Taluka Police Station, Thane Rural, 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 Applicant shall attend the concerned Police Station once in a fortnight for a period of four months from today and shall co-operate with the investigation.
- iii) The Application is disposed of.

(SARANG V. KOTWAL, J.)