

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

ANTICIPATORY BAIL APPLICATION NO. 3275 OF 2023

1. Javed Basir Sayyed
2. Mohammed Sameer Mohammed Ismail Khan ..Applicants
Versus
The State of Maharashtra ..Respondent

Mr. Ayush Pasbola for Applicants.

Ms. Sharmila S. Kaushik, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 19 JANUARY 2024

P.C. :

1. The Applicants are seeking anticipatory bail in connection with C.R.No.479 of 2023, registered at Bandra Kurla complex Police Station, Mumbai, on 13.09.2023, under sections 324 and 504 r/w. 34 of the Indian Penal Code. Subsequently, Section 307 of the I.P.C. is added.

2. Heard Mr. Ayush Pasbola, learned counsel for the applicants and Ms. Sharmila Kaushik, learned APP for the State.

3. At the outset, learned counsel for the applicants states that he is not pressing this application for the Applicant No.2.

Therefore, the application on behalf of the applicant No.2 is

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dismissed as not pressed. I have considered this application only for the Applicant No.1 Javed.

4. The F.I.R. is lodged by one Mohammad Imran Rafiq Shaikh. He has stated that, on 13.09.2023 he saw a crowd in front of his brother Irfan's house. He went there. He saw that a quarrel was going on between his sister in law and one woman. The informant and his brother were trying to pacify those two ladies. At that time, the applicant Sameer who was the husband of that woman and his relative the applicant Javed came there. The applicant No.1 Javed slapped and abused the informant's brother. The applicant Sameer stabbed the informant's brother two times on his abdomen. The informant's brother suffered bleeding injury and, therefore, he was taken to hospital. On this basis the F.I.R. was lodged.

5. Learned counsel for the applicant submitted that the incident took place on a spur of moment. The applicant No.1 Javed had merely slapped the informant's brother. He has not used any weapon. After that the other applicant Sameer gave two stabs on

the informant's brother. Therefore, it cannot be said that the applicant No.1 Javed had shared common intention with the applicant No.2 Sameer.

6. Learned APP opposed these submissions. She produced the medical certificate before the court.

7. The informant's brother Irfan had suffered two stab injuries on his stomach. The one was of the size 2cm x 2cm x 1cm and other was of 0.5cm x 0.5cm x 0.5cm. Both the injuries were described as simple injuries. Those injuries were specifically attributed to the applicant No.2 Sameer. Thus, it is quite clear that the applicant No.1 Javed had played a very minor role. He has not used any weapon. The other applicant Sameer had assaulted subsequently. Therefore, there is substance in the submission of the learned counsel for the applicant that, there was no common intention between both the applicants. The incident had occurred on the spur of moment. In this view of the matter, I am inclined to accept the submission of the learned counsel for the applicant that the applicant Javed's role is minor and he has not shared common

intention with the other applicant Sameer. He can be protected U/s.438 of the Cr.p.c.

8. Hence, the following order :

ORDER

- i) The application on behalf of the applicant No.2 Mohammed Sameer Mohammed Ismail Khan is dismissed.
- ii) In the event of the arrest of the applicant No.1 Javed Basir Sayyed, in connection with C.R.No.479 of 2023, registered at Bandra Kurla complex 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.
- iii) The Applicant shall attend the concerned Police Station once in a week till the filing of the charge-sheet.
- iv) The Application is disposed of.

(SARANG V. KOTWAL, J.)