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

ANTICIPATORY BAIL APPLICATION NO. 3654 OF 2023

Jaki Khalil Bhure	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr. Aabad Ponda, Senior Counsel with Mr. Samsheer Garud
with Ms. Vidhi Karia i/b Jayakar and Partners, for Applicant.

Mr. S. R. Aagarkar, APP for State/Respondent.

Mr. Amol Chindhe, PSI, Manor Police Station, Present.

CORAM:- N. J. JAMADAR, J.

DATED:- 1st FEBRUARY, 2024.

PC:-

1) Heard the learned Counsel for the applicant and the
learned APP for the State.

2) This application is preferred for pre-arrest bail in
connection with CR No. 329 of 2023, registered with Manor
Police Station, for the offences punishable under Sections 307,
324, 143, 147, 148 and 149 of the Indian Penal Code, 1860.

3) There is a dispute over the immovable property situated at
S.No. 39, Mauje Tin between the first informant's family and

applicant- Accused No. 1 and Gulshan Arif Tase, another co-accused. In the suit instituted before the Civil Court Palghar, an injunction has been granted against the accused party. The first informant alleged, on 18th October, 2023, upon being informed that persons had gathered at the said disputed property, the first informant reached the site. He found few persons in the Container at site. The first informant noticed that in the adjoining land held by Zabi Raut, Khalil and Dilkush, the applicant was fixing the board, with the assistance of his associates. Advocate Rajay Gaikwad – Accused No. 2 and Aatif Tase - accused No. 3 were amongst them. Thereupon, the above named persons and other witnesses questioned the applicant and his associates.

4) The first informant alleged that the accused Nos.1 to 3 and 10-12 females and 10-12 males formed an unlawful assembly and in prosecution of common object of unlawful assembly started assaulting Zabi Raut, Khalil and others by means of wooden stick, iron rod and hockey stick. The first informant went to their rescue. Thereupon, the first informant was also assaulted by means of hockey stick and wooden stick. One of the members of the unlawful assembly whipped out a knife and gave blow on the chest of Zabi, with intent to kill him. When Imtiyaz,

another injured, went to the rescue of Zabi, the said assailant gave blow by means of knife on his left leg. Other persons were also assaulted. Hence, the report.

5) At the outset, Mr. Ponda, the learned Senior Counsel for the applicant submitted that by an order dated 8th December, 2023, this Court had granted pre-arrest bail to co-accused Aatif Aarif Tase, in ABA No. 3305 of 2023, to whom the role of initiating the assault was attributed. In contrast, no role of assault at all has been attributed to the applicant. Mr. Ponda further submitted that it is the case of the applicant that the applicant was not at all present at the time of the occurrence and the applicant has lodged the complaint with the Director General of Police on 20th October, 2023.

6) Mr. Aagarkar, the learned APP resisted the prayer for pre-arrest bail. It was strenuously submitted that the report of the first informant and the statement of Zabi would indicate that it was the applicant who had instigated the members of the unlawful assembly to commit murderous assault.

7) I have perused the statement of the injured Zabi.

8) In the order releasing the co-accused Aatif on pre-arrest bail, I have elaborately considered the submissions on behalf of

the prosecution as well as the first informant. This Court was persuaded to grant pre-arrest bail observing, *inter alia*, as under

“...11. I have carefully considered the allegations in the FIR, the statements of the witnesses and the nature of the injuries suffered by the first informant and the other injured. Evidently, the genesis of the offences is in the dispute over the possessory and proprietary title to immovable property. Prima facie, it appears that the members of both the groups had gathered at the scene of occurrence. It also emerges from the FIR that the accused party was allegedly attempting to fix the board in the land adjacent to S.No.39, in respect of which a civil suit is stated to be subjudice. The first informant alleges, as the members of the accused party mounted assault on the injured witnesses, he rushed to their rescue. As noted above, there is a counter version in the form of FIR No.330 of 2023 in which the members of the informant party are arraigned as accused. Prima facie, there is material to indicate that few members of the accused party had also sustained injuries.

.....

13. Instead, I consider it expedient to delve into the role attributed to the applicant, albeit prima facie. In the FIR, the first informant alleges that the named accused Nos.1 to 3, including the applicant, and their 25 odd associates, started assaulting the injured by means of iron rod and sticks. The statement of Zabi, injured, throws some light on the role of assault attributed to the applicant. Zabi stated that the applicant had caught hold of his collar and started to manhandle him. At this stage, associates of the applicant unleashed blows by means of sticks and iron rod. One of the unknown persons gave blow by means of knife on the left side of his chest. I have perused the statements of two other injured as well.

14. Prima facie, the first informant and the injured, do not seem to have attributed role of assault by a weapon to the applicant. Nor is it alleged that the applicant was armed with any weapon. Undoubtedly, the applicant was alleged to be a member of the unlawful assembly, nay it's spearhead. In the face of allegation of constructive criminality by invoking Section 149 of the Penal Code, absence of overt act may not be decisive. However, in a

situation where it prima facie appears that there was a fight between the members of two groups and members of both the groups have sustained injuries, the question as to whether who was the aggressor and whether a particular member of the unlawful assembly shared the common object to commit murderous assault or knew that the offence of attempt to commit murder was likely to be committed in prosecution of the common object of the unlawful assembly, especially where one out of 25 members of the unlawful assembly whipped out a knife and unleashed blows, would warrant adjudication at the trial...”

9) The aforesaid reasons which weighed with the Court in granting pre-arrest bail to Aatif, apply with equal force to the claim of the applicant. Therefore, I am inclined to allow the application.

10) Hence, the following order.

ORDER

I) In the event of arrest of the applicant in connection with CR No. 329 of 2023, registered with Manor Police Station, for the offences punishable under Sections 307, 324, 143, 147, 148 and 149 of the Indian Penal Code, 1860, the applicant be released on bail on executing a PR Bond in the sum of Rs.30,000/- with one or two sureties in the like amount.

II) The applicant shall co-operate with the investigation and attend Manor Police Station on every Sunday in between 10.00 am to 12.00 noon and, thereafter, as and when directed.

III) The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to the first informant and any of the persons acquainted with the facts of the case.

IV) The applicant shall regularly attend the proceedings before the jurisdictional Court.

V) The application stands disposed.

VI) It is, however, clarified that the observations are confined to the consideration of entitlement for pre-arrest bail and the trial Court shall not be influenced by any of the observations in further proceedings.

[N. J. JAMADAR, J.]