

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

ANTICIPATORY BAIL APPLICATION NO. 2143 OF 2024

1. Saddam Anwar Shaikh
2. Abdul Raheman @ Mustafa Akil Shaikh ... Applicants
Versus
The State of Maharashtra ... Respondent

Mr. Mithilesh Mishra a/w Mr. Shahrukh G. Sayyed i/by Agastya Desai for the Applicants.

Mr. Balraj B. Kulkarni, APP for Respondent-State.

Ms. Hasina Shaikh, PSI, Kondhwa Police Station, Pune.

**CORAM: MANISH PITALE, J.
DATE : 21st AUGUST 2024**

P.C. :

. Heard learned counsel for the applicants and learned APP for the respondent-State.

2. The applicants have approached this Court apprehending arrest in connection with FIR No. 0663 of 2024 dated 8th June 2024 registered at Kondhwa Police Station, Dist. Pune, for offences under Sections 326, 323, 504, 506 and 427 read with 34 of the Indian Penal Code, 1860 (IPC).

3. The FIR has been registered on the statement given by the informant, pertaining to an incident dated 7th June 2024. It is alleged that co-accused Sufiyan accosted the informant and assaulted by way of iron rod, causing injuries and that two

unknown persons also assaulted by way of fists and kicks. The FIR was registered against named co-accused Sufiyan and two unknown persons.

4. The learned counsel for the applicants submits that the names of the applicants first featured as wanted accused persons in the second remand application dated 24th June 2024 moved by the investigating authority before the Magistrate. It is submitted that, at worst, the role attributed to the unknown persons, who are now said to be the applicants, is that they assaulted the informant by way of fists and kicks. The offence under Section 326 of the IPC, which is the only non-bailable offence in the present case, cannot be attributed to the applicants, even if the statement of the informant is to be accepted as a gospel truth.

5. The learned APP opposed the present application. But, it was stated that the applicants do not have any criminal antecedents.

6. The statement of the informant, leading to registration of the FIR, shows that only co-accused Sufiyan has been specifically named. It is the named co-accused, who has been attributed with the role of having used an iron rod to assault the informant, leading to injuries. It is this act, which is relatable to the offence under Section 326 of the IPC, which is the only offence categorized as non-bailable.

7. The role attributed to two unknown persons is assault by way of fists and kicks and at this stage, this Court is of the opinion that *prima facie* it can be said that even if the allegations against the unknown persons are to be accepted, the offence under Section 326 of the IPC may not be made out.

8. In any case, the names of the applicants have featured for the first time in the second remand application filed by the Investigating Officer. The Sessions Court has obviously erred in rejecting the anticipatory bail application, *inter alia*, on the ground that the test identification parade is to be conducted, for which custody of the applicants would be necessary. Such a ground is in the teeth of proviso to Section 437(1) of the Code of Criminal Procedure, 1973 (Cr.P.C.), which specifically provides that bail cannot be refused on the ground that the accused person is required for being identified by the witnesses during investigation.

9. As the applicants are ready to cooperate with the investigation, sufficient grounds are made out for allowing the present application.

10. In view of the above, the application is allowed in the following terms :

(a) In the event the applicants are arrested in connection with FIR No. 0663 of 2024 dated 8th June 2024 registered at Kondhwa Police Station, Dist. Pune,

they shall be released on bail on furnishing PR Bond of Rs.25,000/- each and one or two sureties in the like amount to the satisfaction of the trial Court.

(b) The applicants shall remain present before the Investigating Officer on 23rd and 24th August 2024 between 10:00 a.m. and 12:00 noon and thereafter, as and when called by the Investigating Officer. The applicants shall cooperate with the investigation.

(c) The applicants shall not tamper with the evidence of the prosecution in any manner. They shall not influence the informant, witnesses or any other person concerned with the case.

11. Needless to say, violation of any of the aforesaid conditions would make the applicants liable to face proceedings for cancellation of anticipatory bail. It is also clarified that the observations made in this order are limited to the question of grant of anticipatory bail to the applicants in the present application.

12. The application is disposed of.

MANISH PITALE, J.