



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.2276 OF 2024**

Aalimuddin Nijamuddin Shaikh

... Applicant

versus

State of Maharashtra

... Respondent

Mr. Umar Kazi with Ms. Sonia Santis, for Applicant.

Mr. A.A.Naik, APP for State.

PSI Manish Waghmare, Ambernath Police Station present.

CORAM: N.J.JAMADAR, J.

DATE : 28 AUGUST 2024

P.C.

1. Heard the learned Counsel for the parties.
2. This is an application for pre-arrest bail in connection with C.R.No.481 of 2023 registered with Ambernath Police Station for the offences punishable under Sections 307, 326, 325, 323, 506(2), 143, 144, 147, 148, 149 of the Indian Penal Code and Sections 3 read with 25 of the Arms Act, 1959 and Sections 37(1) and 135 of the Maharashtra Police Act, 1951.
3. Tinu H. Bishte, first informant and his brother Rakesh had a quarrel with Nijamuddin Shamshuddin Shaikh (A2) prior to one month of the occurrence. Nijamuddin S. Shaikh (A2) had lodged a report against the first informant with Ambernath Police Station.

Nijamuddin Shaikh (A2) and co-accused, thus, had a grudge against the first informant and his brother Rakesh.

4. On 19 September 2023 at about 11.00 p.m., when the first informant had been to a pharmacy alongwith his wife and niece, two of the co-accused Amir @ Lala (A3) and Aman (A1) intercepted the first informant. Aman (A1) allegedly assaulted the first informant by means of pistol. Amir @ Lala (A3) assaulted him by means of a stick. The applicant, Nijamuddin Shaikh (A2) and others came thereat on motorcycles. They were armed with iron rod, bat and stick. They allegedly assaulted the first informant, his wife and niece. As the first informant's wife and niece raised alarm, the assailants fled away.

5. Learned Counsel for the applicant submitted that the role attributed to the applicant is that of assaulting the niece of the first informant by means of a wooden log. The applicant alongwith the co-accused, Arif and Danish had allegedly also assaulted the first informant by means of a wooden log and fist and kick blows. Arif, the co-accused has been granted pre-arrest bail by the Court of Session. Therefore, the applicant is entitled to the same

dispensation.

6. It was further submitted that the injury certificate of the niece of the first informant, whom the applicant had allegedly assaulted, has not been placed on record. Therefore, the applicant deserves to be enlarged on bail.

7. In opposition to this, learned APP invited the Court's attention to an order, dated 31 October 2023 passed by this Court whereby the application of pre-arrest bail of Nijamuddin Shaikh (A2) and another, was rejected ascribing reasons. It was submitted that the transcript of the CCTV footages and the further statement of the first informant clearly implicate the applicant as one of the members of the unlawful assembly in prosecution of the common object of which the first informant was assaulted. It was further submitted that the applicant has made himself scarce and, therefore, chargesheet was lodged against the co-accused showing the applicant as an absconding accused. Thus, the applicant does not deserve to be enlarged on pre-arrest bail.

8. I have perused the report under Section 173 of the Code of Criminal Procedure, 1973 and the documents annexed with it.

Prima facie, there is material to indicate that the first informant was accosted and intercepted by the co-accused and he was assaulted by means of dangerous weapons. The statements of the wife and niece of the first informant lend prima facie support to the version of the first informant. The injury certificates indicate that the first informant has sustained grievous injuries in the assault perpetrated by the assailants. The first informant and his wife have reiterated the allegations in their statements recorded under Section 164 of the Code, 1973. Panchanama of the CCTV footages, prima facie, indicates that the applicant was one of the assailants who came at the scene of occurrence on motorcycle. The supplementary statement of the first informant attributes a specific role to the applicant of being armed with a wooden log. The applicant had aimed a blow on the first informant, which hit the niece of the first informant. Thereafter, the applicant had also allegedly assaulted the first informant by means of a wooden log.

9. Since the applicant has been implicated as a member of the unlawful assembly, the submission based on the overt act being insignificant, does not merit countenance. The Court cannot loose

sight of the fact that the first informant was assaulted in the presence of his wife and 10 year old niece. There is a subtle distinction between the role attributed to the applicant and Arif, who has been granted pre-arrest bail. A more specific role of assault by means of wooden log has been attributed to the applicant.

10. Moreover, the applicant has made himself scarce. A person who keeps himself away from the investigation agency does not deserve exercise of discretion as it would amount to permitting an accused to take benefit of his own wrong. There is a strong possibility of tampering with evidence and threatening the witnesses as well.

11. In the totality of the circumstances, I am not inclined to exercise discretion in favour of the applicant.

12. Hence, the following order :

ORDER

(i) The Application stands rejected.

(ii) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of

determination of the entitlement for pre-arrest bail only.

Application disposed.

(N.J.JAMADAR, J.)