

MHCC020172342022



IN THE COURT OF ADDITIONAL SESSIONS JUDGE MUMBAI,  
AT GR. BOMBAY

ANTICIPATORY BAIL APPLICATION NO. 2823 OF 2022.

IN

C.R.NO. 1178 OF 2022.

1. Sameer Salim Sayed,
2. Rashid Ansarul Shaikh,
3. Taufiq Ansarul Shaikh.

... Applicants

Versus

The State of Maharashtra,  
(At the instance of Nirmal Nagar  
Police Station)

... Respondent

Appearances :-

Ld. Adv. Mr. A. A. Siddhiqui for the applicants.

Ld. APP Mr. Sukhdeve for the State.

CORAM : H.H. THE ADDITIONAL SESSIONS JUDGE  
DR. A. A. JOGLEKAR (C.R.NO.37)

DATED : 28<sup>TH</sup> DECEMBER, 2022.

ORDER

By this application the applicants **Sameer Salim Sayed, Rashid Ansarul Shaikh and Taufiq Ansarul Shaikh** have sought for grant of pre-arrest bail under Section 438 of the Code of Criminal Procedure, (In short, "Cr.P.C"), as he apprehends arrest by Nirmal

**A.B.A. 2823/2022.**

Nagar Police Station in C.R.No.1178/2022, for the offences punishable under Sections 323, 324, 326, 504, 506 r/w 34 of the Indian Penal Code, (hereinafter referred to as, "IPC").

2. It is the case of the prosecution that, as on 13.12.2022 at about 2.30 PM Yusuf Shaikh and informant's son Faizan were washing their Innova Car near Bandra Railway Station, Rickshaw Stand, Gareeb Nagar, Bandra(East). At that time Salman Salim Sayed that is accused No.1 came there and started hurling abuses against the said duo.
  
3. In the meantime the informant's wife reached the spot as she was informed about such incident of hurling abuses and thereafter, even the informant reached at the spot. Further, the informant's wife asked Faizan to be silent and asked him to come home. The informant also suggested the same to his son and while his son was about to go from the spot the accused No.1 alongwith the applicants hurled abuses and started assaulting them. Wherein, the applicant Nos. 2 and 3 along with the Salman assaulted the informant with kicks and blows, while Rashid that is applicant No.2 had caught hold of the informant. Further, applicant No.3 threw paver block on the face of informant while Salman assaulted the informant with an iron rod upon which informant sustained bleeding at his head. In this scuffle the informant's wife was also assaulted wherein she suffered injury on her mandible. Further, while the informant was hospitalized and even at that particular time the informant's wife and son were assaulted by the applicants. Hence, offence was registered against the applicants and the arrested

accused under the Sections *ibid*. The accused No.1 was put under arrest and it is informed that, the accused No.1 is now enlarged on bail by the Ld. Trial Court.

4. The Ld. Advocate for applicants states that, the entire issue pertains to the fact that, the informant through his so called Society named Gareeb Nagar Rahiwasi Welfare Sangh had filed writ petition before the Hon'ble Bombay High Court and sought indulgence for demolition of structures upon notice issued by the Western Railway and the said petition got disposed of. In this regard, it is alleged that, the informant had collected huge amount from the occupants and that, the applicants exposed the informant and therefore as the public got annoyed and started demanding money back, the informant hatched such conspiracy targeting the applicant and their Gareeb Nagar Ekta Welfare Society and caused such assault. Hence, in this regard, the Ld. Advocate for applicants states that, the upon aforesaid facts and circumstances such custodial interrogation of the applicant is not required. Therefore, he prayed for enlargement of the applicants on pre-arrest bail.

5. Per contra the prosecution has filed their reply vide Exh.2 and *inter alia* have resisted the application on various grounds. It is categorically stated that, the entire incident has occurred upon the issue between two such Welfare Societies and their members as they had locked horns upon certain issues/disputes. Hence, in this regard, the Ld. Prosecutor states that, the factum of the injury deserves consideration more especially when the investigation is at a nascent stage. Hence, the Ld. Prosecutor prayed for rejection of application.

6. Heard Ld Advocate for the applicant and Ld Prosecutor for the state. Perused application and reply.
7. It evinces to myself that, informant is a member of Society named Gareeb Nagar Welfare Rahiwasi Sangh while the applicants are part of a Society namely Gareeb Nagar Ekta Welfare Society. Either of them have agitated against the removal of encroachment by the western railways and that the applicants and the informant allegedly state to have played active roles for Welfare of the members of either Society and in this process applicants and the informant seem to be at a loggerhead. In this background the incident dated 13.12.2022 has to be looked into. The applicants have not categorically denied for their presence at the alleged spot of incident on the relevant day of occurrence of incident nor have they tendered any reason for their very presence at the alleged spot of incident and hence, in this regard, such silence naturally requires investigation more especially when it is alleged that the assault is on the head of the informant which sustained bleeding and that to upon usage of an iron rod.
8. While considering prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused. Frivolity in the prosecution always be considered and it is only the element of genuineness that shall have to be considered in the matter of bail.

9. Thus, considering the fulcrum of arguments it is evident that, at this stage when the applicants have not denied for their presence at that spot and also that, the informant is assaulted with an iron rod allegedly by the applicants along with arrested accused, in my considerate view, this is not a fit case of grant of pre-arrest bail. More so, in this regard, the Hon'ble Bombay High Court has recently observed that, mere necessity of custodial interrogation is one of the ground which is required to be considered and not a sole ground. Upon considering the aforesaid facts and circumstances, I hold that, custodial interrogation is required to unveil such facets of crime under investigation as it being more elicitation oriented. More so, the investigation is at a nascent stage and therefore, granting of such relief of pre-arrest bail shall naturally derail the momentum of investigation. In the backdrop of the aforesaid facts, I hold that, the application deserves no consideration. Hence, order infra :-

**ORDER**

Anticipatory Bail Application No. 2823/2022 stands rejected and disposed of accordingly.



**Date : 28.12.2022**

Dictated on : 28.12.2022  
Transcribed on : 29.12.2022  
HHJ signed on : 03.01.2023

**(DR. A. A. JOGLEKAR)**  
**Additional Sessions Judge**  
**City Civil & Sessions Court,**  
**Gr. Bombay (C.R.37)**

A.B.A. 2823/2022.

**“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”**

| <b>Upload Date</b> | <b>Upload Time</b> | <b>Name of Stenographer</b>                             |
|--------------------|--------------------|---|
| <b>03.01.2023</b>  | <b>04.17 p.m.</b>  | <b>Mahendrasing D. Patil<br/>(Stenographer Grade-I)</b> |

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| <b>Name of the Judge (With Court Room No.)</b> | <b>HHJ DR. A. A. JOGLEKAR<br/>(Court Room No. 37)</b> |
| <b>Date of Pronouncement of JUDGMENT/ORDER</b> | <b>28.12.2022</b>                                     |
| <b>JUDGMENT/ORDER signed by P.O. on</b>        | <b>03.01.2023</b>                                     |
| <b>JUDGMENT/ORDER uploaded on</b>              | <b>03.01.2023</b>                                     |