

MHCC050061292022



**IN THE COURT OF SESSIONS AT DINDOSHI  
(BORIVALI DIVISION), GOREGAON, MUMBAI**

**ANTICIPATORY BAIL APPLICATION NO.1835 OF 2022**

**IN**

**C.R.NO.1267 OF 2022**

Mr. Mohammed Rafique Shaikh  
An adult Indian inhabitant,  
Aged about 36 years, Occ.- Self Employed,  
Residing at Plot No.12, Room No.84,  
N.C.C., Gate No.6, Abdul Hamid Road,  
Malwani Colony, Malad (West),  
Mumbai – 400 095

....Applicant

V/s.

The State of Maharashtra  
(At the instance of Malwani Police Station, Mumbai)

.....Respondent

Adv. Mr. T. R. Patel for applicant/accused.  
APP. Ms. R. S. Kanojia for State/respondent.

**CORAM : H.H. Additional Sessions Judge,  
Shri S. N. Salve.  
Court Room No.15.  
Date : 9<sup>th</sup> December, 2022**

**ORAL ORDER**

This application Under Section 438 of the Code of Criminal Procedure is filed for grant of Bail in anticipation of arrest in Crime No. 1267 of 2022 registered with Malwani Police Station,

Mumbai for the offence punishable under Secs. 326, 324, 323, 504 read with Sec.34 of the Indian Penal Code.

2. The applicant has contended that he is peace-loving, law-abiding citizen of India residing with his family members at the address given in the cause title of the present application. The applicant contended that he is innocent and has no concern with the alleged offence. He is falsely implicated in the aforesaid crime. The applicant contended that he has not committed the offence alleged against him. The applicant further contended that as per the case of the prosecution itself, the injured has already been discharged from the hospital on the very same day. He further contended that there is no recovery at his instance. The applicant further contended that there is absolutely no need of custodial interrogation. The applicant further contended that the main accused has already been enlarged on bail by the learned Metropolitan Magistrate, therefore, he is entitled to be enlarged on bail on the ground of parity. He further contended that there is absolutely no likelihood of tampering with the prosecution evidence and evading the trial. The applicant further contended that he is ready and willing to abide by all the terms and conditions imposed on him while granting bail. On these grounds amongst others, the applicant had sought his release on anticipatory bail.

3. The prosecution has resisted the application by filing say Exh. 3 contending that the accused persons on account of previous quarrel assaulted the informant with iron rod and causing grievous hurt. On these amongst other grounds, the prosecution sought for rejection of the anticipatory bail application. The prosecution further

submitted that the investigation of the crime is underway, co-accused is yet to be arrested and if the present accused is enlarged on bail, the investigation of the crime is likely to be hampered. The prosecution, therefore, prayed that bail application may be rejected.

4. I have heard Ld. Advocate for the applicant-accused and Ld. A.P.P. for the State.

5. After considering the rival submissions, it would be appropriate to grant bail to the applicant – accused in anticipation of his arrest in the aforesaid crime for the following reasons;

**Firstly**, the role assigned to the present accused is very limited to the extent of assaulting the informant by fist blows and kicks. Thus, the role of the present accused is not as of main accused as per the prosecution version. Therefore, it is difficult to hold that case falls under section 326 of the Indian Penal Code against the present applicant – accused.

**Secondly**, the weapon allegedly used in the commission of the offence is already recovered and nothing is to be recovered at the instance of the present applicant – accused.

**Thirdly**, it is not the case of the prosecution that the present applicant has criminal antecedents.

**Fourthly**, custodial interrogation is not necessary for the investigation of the crime.

**Fifthly**, the co-accused are already enlarged on bail by the learned Metropolitan Magistrate. The case of the present applicant – accused is not on higher footing. So, the present

applicant – accused is entitled to be enlarged on bail on parity ground.

**Lastly**, the applicant is permanent resident of Malad, Mumbai, so there is no possibility of evading the trial.

6. In view of the above stated reasons and considering the nature of the crime and manner in which it is committed, it would be appropriate to exercise discretion under section 438 of the Code of Criminal Procedure to release the applicant – accused on anticipatory bail. However, to strike out the balance between the liberty of the applicant-accused and the interest of the prosecution to investigate the crime, it would be appropriate to direct the applicant-accused to attend the Police Station, till filing of the charge-sheet.

In the result, the following order is made :

### **ORDER**

1. Anticipatory Bail Application No. 1835 is allowed.
2. Malwani Police Station, Mumbai is directed that the applicant-accused Mohammed Rafique Shaikh in Crime No.1267/2022 registered with Malwani Police Station, Mumbai for the offence punishable under 326, 324, 323, 504 read with Sec.34 of the Indian Penal Code, in the event of his arrest, he be released on bail on furnishing P.B. and S.B. in sum of Rs.15,000/- (Rupees Fifteen Thousand Only) subject to following conditions :
  - (a) The applicant-accused shall not directly or indirectly make any inducement, threat or promise to any

other persons acquainted with the facts of the accusation against them so as to dissuade them from disclosing such facts to the Court to any other officer.

(b) The applicant-accused shall attend the concerned police station from 11:00 am to 03:00 pm on every Monday, till filing of the charge-sheet.

3. Breach of any of the conditions shall entail cancellation of bail.
4. Inform to the concerned Police Station, accordingly.
5. Accordingly, Anticipatory Bail Application No. 1835 of 2022 stands disposed of.

Dt.09/12/2022

**(S. N. SALVE)**  
Addl. Sessions Judge,  
City Civil & Sessions Court,  
Borivali Division, Dindoshi, Mumbai

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

UPLOAD DATE 09.12.2022  
AND TIME : 5.30 p.m.

Mrs. T. S. Bhogte  
NAME OF STENOGRAPHER

Name of the Judge (with Court Room No.)	HHJ Shri S. N. Salve (Court Room No.15)
Date of Pronouncement of Judgment/Order	09.12.2022
Judgment/Order signed by P.O. on	09.12.2022
Judgment/Order uploaded on	09.12.2022