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ABA.1861/2022

MHCC050062072022



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

ANTICIPATORY BAIL APPLICATION NO.1861 OF 2022
(CNR NO.MHCC05-006207-2022)

**Shafikur Raheman Abdul Jabbar Khan @
Shafik Jabbar Khan,**

Aged about 57 years, Occ:-
Residing at Rmc-22, Govt.Industrial Estate,
Charkop, Opp.Plot No.1, Near Hindustan
Naka, Kandivali (W), Mumbai- 400 067.

...Applicant/Accused

V/s.

**State of Maharashtra
(at the instance of Kandivali
police station).**

....Respondents

Ld. Advocate Shri Arvind Yadav a/w. Adv.Sufiyan Khan for the Applicant/
Accused.

Ld.APP Shri Rajkumar Machewar for the State.

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**CORAM: H.H.THE ADDITIONAL SESSIONS JUDGE
SHRI N.L.KALE
(C.R.NO.14)**

DATE : 25th November, 2022.

ORDER

This is an application u/s.438 of the Criminal Procedure Code 1973 filed by the applicant for seeking Anticipatory Bail in C.R.No.1418/2022, registered at Borivali police station, for the offences punishable under sections 376(2)(n) and 417 of the Indian Penal Code, 1860.

Brief facts which gives rise to file the present application are as under: -

2. Complainant / prosecutrix in this matter is residing at the given address, alongwith his family. His father was a member of Citizens and Manikaran SRA Co-op. Hsg. Society, situated at Mehta compound, Bharat Nagar, Kandivali (W), Mumbai. For that spot, a survey for construction of new building under SRA has been conducted and the said work is allotted to Bhatia builders. Some persons are having opposed for redevelopment for the builders of Bhatia builders. Hence, they have formed New Bharat SRS co-operative housing society.

3. On 23/10/2022, at about 12:30 hours at noon, the complainant and other members of Citizens and Manikaran CHS., were distributing sweets to their members, on account of Diwali. At that time, the members (i.e. accused persons) of "New Bharat SRA CHS.", arrived there. They started giving abuses to the complainant and the members of

"Citizens and Manikaran CHS.," Accused Irfan gave a fist blow on a nose of Rajbali, due to which Rajbali sustained bleeding injury. All the accused forcibly pushed Rajbali outside the office of their sanstha. When, the complainant and others went to rescue Shri Rajbali from the clutches of the accused, at that time, all the accused gave abuses to them and caused beatings to them. Accused Irfan gave threatenings to the complainant and other members of their society to break their legs and to kill them. He assaulted the complainant by means of Iron chair. Hence, the complainant sustained fracture injury to left hand finger.

4. It is alleged further that, in a said assault of the accused persons, Rajbali, Rakesh, complainant, Shahabuddin Khan etc., sustained injuries. They all obtained medical treatment of the same at Dr. Babasaheb Ambedkar Hospital, Kandivali (W). Thereafter, the complainant lodged report in this regard.

5. On the basis of his said report, Kandivali police registered his report. Police arrested accused namely Irfan Khan, Aziz Shaikh, Abdul Khan etc. They were produced before Ld M.M.Court. They were released on bail by Ld. M.M.Court, by its order dtd.01/11/2022.

6. Now, the present applicant, who is shown as one of the co-accused in this crime, is seeking pre-arrest bail for him. According to the applicant, he has not committed any crime as alleged against him. According to him, main accused in this crime are arrested and already released on bail. So also, weapon in this crime is recovered by police.

Hence, his presence with police is not necessary.

7. This application is strongly resisted by prosecution by filing reply vide Exh.2. According to prosecution, offence alleged is serious in nature and all the accused in furtherance of their common intention have committed an assault on the complainant and the witnesses. According to the prosecution, for the purpose of further investigation custodial interrogation of the applicant is necessary.

8. Ld. advocate appearing for the applicant submitted that, other 3 co-accused have been arrested and they were already released on bail by Ld. M.M.Court. He relied upon the contents in Remand Report and submitted that, a weapon i.e. iron chair is seized by police and now, nothing is to be recovered or seized from the applicant. He submitted further that, the allegations against the present accused are regarding causing beatings by means of hand only. He submitted further that, the applicant is ready to abide by the conditions if any, imposed upon him.

9. On the contrary, Ld. APP submitted that, the complainant has sustained fracture injury to his left hand finger, which is grievous in nature. He submitted further that, other co-accused are released after their arrest and hence, the said ground is not applicable for the applicant. According to him, the offences alleged are serious and investigation is in progress. He prays to reject the prayer.

10. It is a fact that, other 3 co-accused in this crime are released on bail by Ld. M.M.Court. But, mere this fact is not sufficient to say that,

the applicant is entitled for a ground of parity in his favour. Because, those three co-accused have been arrested by police and thereafter, they all have been released on regular bail. But, the present applicant is seeking pre-arrest bail. The principles or considerations for governing regular bail and pre-arrest bail are different one. Hence, though, other co-accused are released on bail, this fact can not be treated as a good ground to allow the prayer of the applicant.

11. From the contents in the FIR and say of I.O. it appears that, the complainant had sustained fracture injury to his left hand little finger. The said injury is grievous in nature. No doubt, there are no specific allegations that, the present applicant is responsible for the said injury to the complainant. But, the contents in a complaint *prima facie* disclosed that, the present applicant and other co-accused assaulted to other persons, who came to rescue the incident. In other words, there are more than one injured in the incident in question. Though, the present applicant is not responsible for causing fracture injury to the complainant, all the accused (including the applicant) have committed the alleged assault on prosecution witnesses, infurtherance of their common intention. From the say of I.O., it appears that, investigation is still in progress. Statements of some witnesses are yet to be recorded. Punishment prescribed for an offence U/s.326 of IPC is imprisonment for life.

12. Considering specific allegations in a complaint regarding, involvement of the applicant, nature of the offence etc., I am of the view that, the applicant has not made out a case to use discretion in his favour. Hence, this application deserves to be rejected. Hence, I proceeded to pass

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following order:

ORDER

Anticipatory Bail Application No.1861 of 2022 is rejected and disposed of accordingly.

(Order pronounced in open Court)

Date: 25.11.2022

(N.L.KALE)

**THE ADDL.SESIONS JUDGE
CITY CIVIL & SESSIONS COURT,
BORIVALI DIVISION, DINDOSHI**

Order direct dictated on

: 24.11.2022

Checked & corrected on

: 25.11.2022

Signed on

: 25.11.2022

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

UPLOAD DATE

Ms.Madhura M. Palav

AND TIME : 25/11/2022 at 05:21 P.M.

NAME OF STENOGRAPHER

Name of the Judge (with Court Room No.)	HHJ Shri N. L. Kale (Court Room No.14)
Date of Pronouncement of Judgment/Order	25/11/2022
Judgment/Order signed by P.O. on	25/11/2022
Judgment/Order uploaded on	25/11/2022

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