

ndm

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
APPELLATE SIDE**

ANTICIPATORY BAIL APPLICATION NO. 888 OF 2015

1. Abu Khalid @ Anjum Abdul Gaffar Shaikh
2. Mohammed Saif a.k.a. Danish Mohd. Tariq Shaikh
3. Abu Fahad a.k.a. Sufiyan Abu Khalid Shaikh.

... APPLICANTS

VERSUS

State of Maharashtra.

... RESPONDENT

...

Mr. H. Desardi, Advocate I/b M/s. H. D. Associates, for Applicants.

Mr. S. H. Yadav, APP for Respondent / State.

Mr. Ramdas Popat Naykaude, P.S.I., Shahu Nagar Police Station, Dharavi, is present.

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CORAM : **V. L. ACHLIYA, J.**

DATE : 29th June, 2015.

P.C.:

1 Applicants have filed this application under Section 438 of Criminal Procedure Code seeking anticipatory bail for the reasons set out in detail in the application.

2 In nutshell, it is the say of applicants that on the basis of false and frivolous complaint lodged at the instance of one Mr. Mohammad Usman Khan with Shahu Nagar Police Station, the Police have registered an offence under Section 323, 326 r/w 34 of the

Indian Penal Code vide C.R. No.152 of 2015, against the applicants. Applicants are apprehending their arrest in said crime. It is the say of applicants that they are law abiding, peace loving citizens and they have absolutely no criminal antecedents. Applicant No.1 is working on the project of awareness against the drug abuse in Dharavi area and also organize various awareness programs with the help of Mohalla Ekta Samiti. He was also president of Dharavi Businessmen Welfare Association (hereinafter referred to as "said Association" for the sake of brevity) for a period of six years and still he is an active member of said Association. Applicant No.3 is the son of Applicant No.1 and Applicant No.2 is the son of brother of Applicant No.1. On 07.04.2015, Applicant No.1 alongwith other members of said Association, visited Shahu Nagar Police Station to make a complaint against illegal and unauthorized activities of Contractor of skywalk in the vicinity. Mr. Shantaram Patil, Senior P.I. of said Police Station was found to be in inebriated condition. He threatened the members of said Association and also abused them in filthy language. The members of the said Association have lodged a complaint in respect of incident dated 07.04.2015 with Commissioner of Police, Mumbai on 10.04.2015. Pursuant to their complaint, Mr. Shantaram Patil, Senior P.I. of said Police Station was suspended. It is the say of applicants that as Applicant No.1 was active member of said Association and come forward to lodge the complaint against Police Officer, the applicants are implicated in false case. It is the specific say of applicants that on the alleged day and time of incident, they were not present on the spot. The Applicant Nos.1 and 2 were present in marriage function of their relative at Saint Xaviers Engineering College, Mahim. There is a CCTV footage available in respect of the building in which applicants

are residing, showing the time at which the son of Applicant No.1 i.e. Applicant No.3 entered in the building. Applicant Nos.1 and 2 were present in the marriage ceremony beyond 11:00 pm. They have an evidence to show that they are falsely implicated in the present case.

3 On the other hand, learned APP for the State has supported the order passed by the learned Sessions Judge and strongly opposed the application with contention that there is a strong case to connect the applicants with commission of offence. Learned APP submits that in the FIR, names of all three accused are disclosed. Recovery of weapons used in commission of offence is to be made. The offences are serious in nature.

4 I have perused the case diary. Perusal of case diary reveals that the incident in question was occurred on 10.05.2015 at about 11:30 pm in front of Church, Jasmine Road, Dharavi. The FIR in respect of said incident was lodged on 14.05.2015 i.e. after a period of 3-4 days after the incident. In the FIR, the complainant has disclosed that on 07.05.2015, he had some quarrel with Applicant No.1 and they had verbal exchange on account of dash given to him by motorcycle driven by Applicant No.1. In that incident, lateron, Applicant Nos.2 and 3 also joined with Applicant No.1 and they assaulted him by means of fists and kicks blows. In that incident, he had received bleeding injury on his face. After the incident, he visited Sion Hospital. However, he has disclosed to doctor that he had suddenly fell down after feeling giddiness. In his complaint, the complainant has further alleged that on 10.05.2015 at about 23:30 hours, while he was returning to his house near Church, Jasmine Road, Applicant No.1 and his son i.e. Applicant No.3 were proceeding on the motorcycle and when he

casually looked towards them, they asked him as to why he is staring towards them. Thereafter, Applicant No.1 assaulted him on his back with some sharp aged weapon and Applicant No.3 assaulted with some object on left side of his chest. Applicant No.2 assaulted him by means of fists and kicks blows. He fell down on the road. On the next day i.e. on 11.05.2015 at 16:00 hours, his relative got admitted him in hospital. Thus, if we consider the complaint lodged by the complainant, then it is apparent that the complaint was lodged on 14.05.2015 in respect of incident dated 10.05.2015. There is no explanation as such recorded in the complaint as to why complaint has been lodged after 3-4 days after the incident. Delay in lodging FIR i.e. period of 3-4 days clearly supports the case of applicants that possibility of they being involved in a false case cannot be ruled out under the facts and circumstances of the case. Perusal of case papers of investigation produced by the Investigating Officer reveal that as per the noting taken in the casualty department, the complainant has disclosed that he was assaulted by three persons by fists, leg and some sharp instrument at Kamala Nagar Church. The record of admission of complainant in the hospital further reveals that on 11.05.2015 at about 01:45 am, further history was recorded wherein the complainant has disclosed that he was assaulted by 5-6 unknown persons at 10:00 pm at Matunga by sharp object (knife). The medical papers further reveal that the complainant was found to be under influence of alcohol. Medico legal case papers further reveal that at the time of admission of complainant in the hospital and examination, he was found to be with no history of loss of conscious or otherwise so as to unable him to make statement. It is also recorded in the medico legal papers that the complainant was under influence of

unknown substance (Gaanja) at the time of incident.

5 Having regard to the fact that the complaint was lodged after four days and there is a variance in respect of place of incident, number of persons involved, possibility of applicants being roped in, in a false case, cannot be ruled out in the facts and circumstances of the case. If the complainant was conscious than there was no reason for not disclosing the real incident and name of culprits immediately after the incident. The applicants have produced on record a copy of complaint lodged by the said Association on 10.04.2015 to Commissioner of Police, Mumbai, against Mr. Shantaram Patil, Senior P.I., the then attached to Police Station Shahu Nagar, who is reported to be suspended after the receipt of complaint from the said Association. In the complaint, name of Applicant No.1 is specifically mentioned as one of the persons, who were present on 07.04.2015 at Shahu Nagar Police Station, where Senior P.I. was found to be in drunken condition. The learned counsel appearing for the applicants submits that on 11.05.2015, one person, who is in common acquaintance of applicants and complainant, recorded the conversation of complainant wherein he has clearly stated that he has stated the names of applicants in FIR at the instance of 3-4 persons and he is ready and willing to disclose the true facts to Police. The applicants have provided that information to concerned Police Station on 13.06.2015, so as to make fair investigation in the matter.

6 Therefore, considering the overall facts of the case as discussed in forgoing paras, I am of the view that, applicants have made out a case for grant of anticipatory bail in their favour. In view of the fact that FIR was lodged after four days and there is no plausible

explanation put forth by the prosecution for delay in lodging FIR and taking into consideration the other facts as discussed in forgoing paras, I am of the view that possibility of applicants being roped in, a false and frivolous case cannot be ruled out under the facts and circumstances of the case. According to me, it is a fit case wherein indulgence of the Court as contemplated under Section 438 of the Criminal Procedure Code is required to be made. Hence, I am inclined to allow this application with certain conditions.

ORDER

- I. Criminal Anticipatory Bail Application No.888 of 2015 is allowed.
- II. In the event of arrest of applicants in C.R.No.152 of 2015, for the offences punishable under Sections 323, 326 r/w 34 of the Indian Penal Code, registered with Shahu Nagar Police Station, the applicants be released on bail on their furnishing Bail in the sum of Rs.15,000/- (rupees fifteen thousand only) with one surety in like amount in respect of each of the applicants.
- III. The applicants shall attend the Shahu Nagar Police Station from 1st July, 2015 to 8th July, 2015, every day in between 04:00 pm to 07:00 pm and cooperate with the Investigating Officer in proper investigation of the case. Thereafter, the applicants shall attend the

Police Station as and when required by the Investigating Officer on receipt of written intimation from the concerned officer for the purpose of investigation.

- IV. The applicants shall not leave the city of Mumbai for a period of four weeks from passing of this order.
- V. The applicants shall not meet the complainant and make any attempt to pressurize any of the prosecution witnesses.
- VI. It is clarified that the observations made while disposing of this application shall not be considered as the view expressed by this Court as to the merit of the matter. The observations so made are only for the limited purpose to see as to whether any *prima-facie* case is made out or not for grant of anticipatory bail to applicants.
- VII. With this order and direction, the application be marked as disposed of.

[V. L. ACHLIYA, J.]