

FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.52 OF 2016

Dharmalingam Kupanandan

....Applicant.

vs.

The State of Maharashtra.

...Respondent.

Mr. K.S. Labana for the Applicant.

Smt.M.H.Mhatre, APP. for the State.

CORAM : A.S.GADKARI, J.

DATE : 14th January, 2016

P.C.

The applicant is apprehending his arrest in CR No.I 293/2015 dated 1.11.2015 registered with Ambarnath Police Station, District Thane under Section-326, 323, 504,506, 143,148 and 149 of the Indian Penal Code.

2) The complainant Arul Pandiyan has lodged the first information report dated 1.11.2015 stating that he resides near Gansh Mandir, Swami Nagar, Ambarnath (W). In the said vicinity during the Ganpati festival the applicant and other accused persons had erected a shed for installation of the idol of Ganpati. After the Ganpati festival was over the applicant and other accused did not remove the said shed and therefore, Mr. Kripanandan Iyoti and another person had made an application to the Ambarnath Municipal Council. On the said application about 100 people had signed in favour of the said Mr.Kripanandan Iyoti including the complainant. The applicant and other co accused therefore, having grudge in their mind had abused the complainant and others on 28.10.2015. That on 30.10.2015 at about 11.00 p.m. the complainant with his brother Veer Pandiyan and cousin brother Ramrajan Ramlingam were proceeding by a road towards their house. At that time Mr. Velan

Tangwel (accused), the present applicant and other co accused persons came from the front side and threatened the complainant and other persons and started abusing. At that time, applicant gave a blow on the head of the said Veer Pandiyan with beer bottle which was in his hand. The said Veer Pandian started profusely bleeding. When the complainant and his cousin brother Ramrajan Ramlingam tried to rescue Veer Pandian the applicant and other accused persons assaulted them with fist and kick blows. The complainant and his cousin brother thereafter took the said Veer Pandiyan to Chhaya Hospital. The Doctors who were on duty at Chhaya Hospital directed the persons to take the injured in Central Hospital, Ulhasnagar. The Doctors from the Central Hospital further directed the complainant and other persons to take the injured in KEM Hospital at Mumbai for further treatment. In the premise, the complainant lodged the aforesaid first information report.

3) The learned counsel for the applicant submitted that as a matter of fact the injured and his family members were aggressor and they had assaulted the family members of the applicant herein. He submitted that because of the same the first information report dated 31.10.2015 has been lodged by Mr. Shivkumar Tangwel which is prior in point of time. He therefore, submitted that as an after thought the present crime is registered by the complainant. He therefore, submitted that the applicant may be granted pre-arrest bail.

4) The learned APP has produced the papers of investigation including the reports given by the Medical Officer. It is to be noted here that as stated earlier the injured Veer Pandiyan was admitted to KEM Hospital, Mumbai and as per the Medical record he was unconscious from 30.10.2015 to 7.11.2015. The statement of the injured victim was recorded by the police on 8.11.2015. In his statement dated 8.11.2015 the injured witness has categorically stated that the applicant gave a blow

with the aid of beer bottle on his head and therefore, he suffered bleeding injury. He has further stated that due to the said assault he became unconscious. The papers of the investigation further disclose that the beer bottle which was used by the applicant for assaulting the victim is yet to be recovered. As per the instructions of the learned APP, the blood stained clothes which were on the person of the applicant at the time of commission of the offence are yet to be recovered. After taking into consideration the serious allegations, gravity of the offence and the role played by the applicant, I am of the considered opinion that this is not a fit case for grant of pre arrest bail to the applicant. The application being sans of merits, is accordingly dismissed.

(A.S. GADKARI, J.)