

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.165 OF 2016

Mr. Moinuddin Mehboob Shaikhand anr.Applicant.
vs.
The State of Maharashtra.Respondent.

Mr. Shashi Pandey with Ashish Dubey for the Applicant.
Mrs. A.T. Javeri, APP. for the State.
Mr.Omprakash Pandey for the Intervener.

CORAM : A.S.GADKARI, J.
DATE : 3rd February, 2016.

P.C.

The applicant is apprehending arrest in CR No.25/2016 registered with MIDC Police Station, Mumbai under Sections 326 read with 34 of the Indian Penal Code.

2) The complainant Smt. Shehanaz Shaikh is the first wife of Applicant No.1 Moinuddin Shaikh. Due to matrimonial discord the complainant along with her sons and daughters used to reside at the address i.e. the scene of offence. That, on 7.1.2016 at about 8.30 a.m. the applicant No.1 along with his wife i.e. the Applicant No.2, his mother Applicant No.3 and his sister Applicant No.4 came at the residence of the applicant/complainant. The applicant No.1 thereafter abused the complainant. There were altercations. At that time the applicant No.1 gave a blow on her right hand of the complainant with the aid of iron rod and also assaulted her. When her sons Ibrahim and Imran tried to intervene and rescue the complainant, the applicant No.1 assaulted her son Imran on his right knee with the iron rod. The complainant has further stated that the applicant Nos.2 and

3 also assaulted the complainant and her sons. In the premise, the first information report is registered.

3) Heard the learned counsel for the applicant and the learned APP and also perused the papers pertaining to the investigation.

The version of the complainant as stated in the first information report is duly corroborated by the Medical Certificate issued by the Cooper Hospital, Mumbai. In the said Certificate, it is stated that the injury caused to the complainant is a fracture on the forearm and the description of the said injury is given as grievous hurt. The injury certificate of Imran also mentions about the fact of assault by blunt object on the right foot however, the nature of injury is given as simple. It appears from the first information report and the statement of other witnesses that the applicant No.1 was not only aggressor but is instrumental in causing the injury to the complainant and her son. As far as other accused Nos. 2 to 4 are concerned, it appears that the role attributed to them is general in nature. The allegations against the applicant No.3 that she had a bite on the right hand thumb of the complainant. The said allegation is not supported by the medical evidence.

4) Thus, after taking into consideration the first information report and the evidence available on record, I am of the view that the applicant No.1 is the main perpetrator of the present crime. The iron rod in the present crime has to be recovered from him. That, in view

of the serious allegations made against the applicant No.1, I am not inclined to grant any relief to applicant No.1. The pre-arrest bail application made by applicant No.1 is dismissed.

4) As far as applicant Nos. 2 to 4 namely Raisa Moinuddin Shaikh, Zulekha Bi Mehboob Shaikh and Moulabi Mehboob Shaikh are concerned, as stated above the role attributed to them is general in nature. There are no serious allegations against them. That, the applicant Nos. 2 to 4 are ladies. Taking into consideration the aforesaid fact in the present crime, they deserve to be protected by pre arrest bail.

5) Hence, the following order.

ORDER

a) The application of pre-arrest bail of Applicant No.1 Moinuddin Shaikh is rejected.

b) In the event of arrest of applicant Nos. 2 to 4 namely Raisa Moinuddin Shaikh, Zulekha Bi Mehboob Shaikh and Moulabi Mehboob Shaikh in CR No.25/2016 registered with MIDC Police Station, Mumbai, they shall be released on their furnishing PR bond of Rs.15,000/-each with one or two solvent sureties in the like amount.

c) The applicants shall not tamper with the evidence and or influence the prosecution witnesses.

d) Application is partly allowed in the aforesaid terms.

(A.S. GADKARI, J.)