

*Ladda*FARAD CONTINUATION SHEET No.IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 177 OF 2016

Neelesh Namdev Gurav Vs. The State of Maharashtra

Office Notes, Office Memorandum of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr Ganesh Mohite for the applicant.
Smt. P.P.Shinde, APP for the State.
P.I.Dube, Santacruz P.S.

CORAM : A.S.GADKARI, J.
DATE : 1st February, 2016

P.C.

- 1) The applicant is seeking pre-arrest bail in CR No.40/2016, dated 21/01/2016 registered with Santacruz Police Station under sections 326, 504, read with section 34 of the IPC.
- 2) The first informant Rahul Kanhiya lodged the FIR on 21.1.2016 thereby stating that on 21.1.2016 at about 2:30 a.m. he had been to the Medical stores for purchasing the medicine. At that place, he met with his friend namely Yogendra, who is in the business of cable network. Along with the said Yogendra, the brother of the complainant namely Avinash Shinde and other person were present. The said three persons were connecting the broken fiber optical cable. The complainant

was chitchatting with them. At that time, one red colour car bearing No. MH-02-DZ-2424 came near them. Four persons alighted from the said car. The complainant noticed that the said persons were under the influence of alcohol. Out of the said four persons one unknown person / applicant questioned Yogendra, as to how he is laying his cable at the said place and tried to assault Yogendra. At that time, Yogendra told the two persons, as Neelesh and Nikhil and questioned them that, they have yet not received cable point and how can they do the business of cable network. The applicant and Nikhil got enraged because of the same and started beating Yogendra. The complainant and his brother tried to Yogendra from the clutches of the applicant and other accused persons. That the applicant and co-accused Nikhil took out choppers from their car and assaulted the complainant on his head and right wrist. The complainant was severely injured because of the said assault. That the applicant and other accused and Nikhil also assaulted the brother of the complainant Avinash on the rear portion of the left thigh by chopper. Because of the commotion the residence of the nearby locality gathered and the applicant and other accused persons ran away by their car. The complainant thereafter took the treatment and lodged the FIR.

3) The learned counsel for the applicant submitted that the other co-accused namely Nikhil has been protected by an order of ad-interim relief by the Trial Court. However, the application preferred by the applicant has

been rejected. He submitted that the Trial Court has committed an error in rejecting the bail application of the applicant. He further submitted that there is cross case and the applicant herein has lodged the CR No. 41/2016 with the said police station. He submitted that as other accused person namely Nikhil is protected by the Trial Court the present applicant may also be protected by way of pre-arrest bail.

4) I have perused the order dated 27.1.2016 passed by the learned Trial Court thereby granting ad-interim relief in favour of Nikhil. It appears from the reading of paragraph 5 of the said order that the learned Trial Court has taken into consideration the irrelevant aspects while deciding the said application. It has been observed that the prosecution has not produced any document to support that the complainant was in fact, injured. The Trial Court observed that the present applicant is involved in seven other offences and that was only the reason which was weighed with the Trial Court while granting ad-interim relief to Nikhil and rejecting the application of the present applicant.

5) The learned APP has produced before me the papers pertaining to the investigation of CR No. 40/2016. The medical certificate issued by Municipal Corporation's Hospital (Bhaba Hospital) clearly supports the version of the complainant. It appears from the said certificate that the said complainant/injured has received four injuries out of which one injury is on the frontal side of the head.

6) The complainant has specifically stated that the applicant and other accused person namely Nikhil gave blows with the aid of chopper on his head and hand and also assaulted to his brother Avinash on the rear side of his thigh. The statement of the complainant is duly corroborated by the medical certificate. The allegations made in the complaint/FIR are serious in nature and the police have to recover the weapons used in the present crime. The police will also have to recover the blood stained clothes, if any, which were on the person of the applicant at the time of commission of offence.

7) After taking into consideration the aforesaid facts, I find that the applicant cannot be protected by way of pre-arrest bail. The application is accordingly dismissed.

(A.S.GADKARI, J.)