

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.1171 OF 2016**

1. Kamil Balam Shaikh
2. Jahid Balam Shaikh
3. Asif Rafique Shaikh
4. Faijaj Karim Shaikh .. Applicants
vs
The State of Maharashtra .. Respondent

with

ANTICIPATORY BAIL APPLICATION NO.1200 OF 2016

1. Ashpak Rafik Shaikh
2. Sajid Rafik Shaikh
3. Firox Rafik Shaikh
4. Matin Balam Shaikh .. Applicants
vs
The State of Maharashtra .. Respondent

Mr.Rishi Bhuta for Applicants in both ABAs
Ms.R.M.Gadhavi Additional Public Prosecutor for State

CORAM: A.M.BADAR, J

DATE: 1st AUGUST, 2016

P.C.

1. Applicants/accused in crime no.113 of 2016 for the offence punishable under section 143, 147, 148,149, 307, 337 of the Indian Penal Code and under section 37 and 135 of the Bombay Police Act registered at police station Igatpuri District Nasik by these applications are praying for pre-arrest bail.

2. Heard learned counsel appearing for the Applicants.He argued that name of none of Applicants in Anticipatory

Bail Application No.1171 of 2016 can be found in the FIR. In fact Applicant-Ashpak Rafik Shaikh in Anticipatory Bail application No.1200 of 2016 had lodged the FIR first in point of time against the prosecuting party on 15 June 2016 which has resulted in registration of crime no.112 of 2016 against the present informant as well as other members of the prosecuting party. Learned counsel further argued that deliberately injury certificate is not being produced either before the Additional Sessions Judge or before this Court as no injury which can be termed grievous hurt was suffered by the victim nor offence punishable under section 307 of the Indian Penal Code is made out. The learned counsel further argued that the weapon of the alleged offence is already recovered as seen from the order of the learned Additional Sessions Judge releasing some of the accused persons on regular bail.

3. As against this, the learned APP argued that in the cross-FIR injury certificates are not produced by present Applicants. She further argued that the Investigating Officer is not present and therefore, she is not aware about the nature of the injuries suffered by the victim. It is seen from the record that after issuance of notice on 14 July 2016 applications were adjourned to 28 July 2016. On

that day, the learned APP made a statement that the Investigating Officer has not received the injury certificate as yet. Therefore, this Court directed the APP to produce the case diary today i.e. on 1 August 2016. Today also, neither the case diary is produced nor the Investigating Officer is present. Hence, this Court has no alternative but, to decide the applications with the available record.

4. Informant-Haroon Ahmed Shaikh in his report dated 15 June 2016 has averred that on 15 June 2016 he saw rush of people in front of the house of one Rafique Dhobi. Therefore, he went there. At that time accused Ashfaq Rafiq Shaikh started abusing him and suddenly accused named Sajid Shaikh, Rafique Shaikh, Shaikh Matim Balam, Feroz Rafique Shaikh, Sharikh Shaikh, Feroz Tanzim Shaikh and other two/three persons assaulted him as well as his family members. The informant averred that those accused were holding swords and sticks. According to the informant, accused- Sharikh Shaikh and Firoz assaulted him by means of a sword. Others assaulted members of the prosecuting party by stones and sticks. Then FIR came to be lodged at about 9.12 a.m. on 15 June 2016.

5. It is seen that earlier in point of time at about 5.50 a.m. on 15 June 2016 accused-applicant Sharikh Shaikh has lodged a FIR against the prosecuting party including informant-Haroon Ahmed Shaikh with an averment that they all assaulted accused persons in crime no.113 of 2016 by means of swords, koyta, iron rods and sticks. In pursuance to this FIR, crime no.312 of 2016 was registered at the same police station.

6. It is seen that vide order dated 27 June 2016 the learned Additional Sessions Judge was pleased to release the accused named Tanjim, Sharikh, Saif and Faijaj in crime no.113 of 2016 on bail by observing that injury certificates is not placed on record and that the sword is already recovered.

7. Prima facie, it is seen that a free-fight erupted on the spur of moment between the prosecuting party and accused party and both sides have lodged FIRs against each other. Applicants in Anticipatory Bail Application No.1171 of 2016 are not even named in the FIR. The role attributed to Applicant in Anticipatory Bail Application No.1200 of 2016 is that they had assaulted victims by means of stones and sticks. Despite availing a chance the

Investigating Officer has not produced the injury certificates of any of members of the prosecuting party. The weapon of the offence is already stated to have been recovered. It is not apprehended that on release on anticipatory bail, applicants will not participate in the investigation and they will thwart the course of justice.

8. In this view of the matter, Applicants are entitled to be released and therefore the following order :

ORDER

(i) Both Anticipatory Bail Application nos. 1171 of 2016 and 1200 of 2016 are allowed.

(ii) Applicants-accused in both the applications in the event of their arrest in crime no.113 of 2016 registered with police station Igatpuri at the instance of the informant-Harun Ahmed Shaikh be released on bail on their executing P.R.bond of Rs.10,000/- each on furnishing surety in the like amount by each of them.

(iii) As a condition of this order, applicants/accused shall attend police station Igatpuri on 14 August 2016 and 21 August 2016 between 11.00 a.m. to 1.00 p.m.and shall co-operate with the Investigating Officer;

(iv) Applicants-accused shall not directly or indirectly

make any inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade him from disclosing such facts either to the Court or to any police Officer and that he shall not tamper with the evidence;

(v) Applicants/accused shall inform his latest place of residence and cell number after his release and continue to inform the change in residence or cell number, if any from time to time to the Investigating Officer of the concerned police station and on filing the charge sheet to the concerned Court;

(vi) Applicants/accused shall co-operate for expeditious disposal of the trial;

(vii) Applicants/accused shall not commit an offence similar to the offence of which they are accused or suspected of commission.

(A.M.Badar, J)