

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1225 OF 2016

MOHD. SHARIF MAKHANDIN PATHAN)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.R.V.Gupta, Advocate for the Applicant.

Mrs.Rutuja Ambekar, APP for the Respondent – State.

Shri D.K.Pagare, P.S.I. attached to Mulund Police Station, present in court.

CORAM : P N. DESHMUKH, J.

DATE : 22nd JULY 2016.

P.C. :

1 Issue notice to respondent. Learned APP accepts notice on behalf of respondent – State. Investigating officer is present along with case diary. By consent heard finally.

2 Learned counsel for applicant prays for grant of protection from arrest contending that even on considering the report lodged by Satyavan Garud, on the basis of which offence is registered, role attributed to applicant is that applicant along with co-accused assaulted

complainant by stump on his hand and neck, causing simple injuries and no recovery is effected from the applicant, and has submitted that there being cross cases involved, applicant be granted anticipatory bail.

3 Learned APP opposed the application on the ground that applicant is author of serious injuries sustained by complainant on his neck and on the ground of recovery of wooden stump, as according to her, one stump is seized from the spot.

4 Perused the FIR on the basis of which offence came to be registered vide Crime No.137 of 2016 by Mulund Police Station on 9th April 2016 for the offences punishable under Sections 307, 323, 504, 143, 144, 147, 148 and 149 of the Indian Penal Code.

5 Admittedly, on the strength of a cross complaint filed by Diwakar alias Kandy on the same day, offence is registered vide Crime No.140 of 2016 punishable under Sections 326, 143, 144, 145, 147, 148, 149, 323, 504 and 506(2) of the Indian Penal Code, with reference to incident occurred earlier than the incident in Crime No.137 of 2016 registered on the basis of report lodged by Satyavan.

6 On perusal of report, it is stated that in the night of 8th April 2016 at 00.15 hours co-accused Sajju Malik and his two friends without any reason assaulted Srirang Parte and his friend Nikhil Shinde by fist blows. In the same night at around 1.00 a.m., co-accused Sajju Malik and his friends caused damage to five vehicles by breaking its glass which were parked in front of Dashmesh School. Srirang Parte and his friend Nikhil Shinde accordingly informed said fact to police by visiting Mulund Police Station.

7 On the same day, at around 11 a.m., complainant received telephonic message from Diwakar alias Kandy, who is complainant in cross case, to meet near Amarnagar Fish Market. Complainant Satyavan accordingly, along with Asif Khan (co-accused in cross case) reached said place at around 11.00 p.m., where applicant along with co-accused Kandy, Tausif and Siraj were present and indulged in abusing complainant Satyavan and in the course of some transaction, co-accused Sajju Malik arrived on the spot armed with wooden stump and assaulted with it on the head of complainant Satyavan. At the same time, applicant and co-accused Kandy assaulted on hands, shoulder and neck by wooden stumps. It is further stated that in the

course of same transaction, complainant Satyavan and his friend Asif Khan were assaulted by other co-accused Tausif and Siraj by fist blows and kick blows.

8 On perusal of contents of report, it thus appears that co-accused Sajju Malik had committed assault on head of complainant Satyavan. The role attributed to applicant is of his committing assault by stump on the hands, shoulder and on neck of complainant with co-accused Kandy. From the report it reveals that in this incident, apart from applicant, co-accused Sajju Malik and Kandy were found armed with wooden stumps. Except for this, no other accused are found having any weapons with them.

9 Learned counsel for applicant, during the course of arguments, has tendered on record police report filed before the learned Sessions court and has pointed out that according to said report, three wooden stumps came to be recovered and seized as were found on the spot. Having considered the facts as stated in the report as well as in the spot panchnama as above, I find no substance when it is contended by learned APP that wooden stump used by applicant needs to be recovered and seized, as according to report, there appears in all three wooden stumps involved in this crime, which are all, found seized from the spot.

10 Having considered contents of report together with medical certificate of Satyavan, it reveals that on being referred to government hospital on 8th April 2016, he is stated to have sustained one contused wound with occipital aspect of scalp which injury from the contents of FIR can be attributed to co-accused Sajju Malik, while other injuries sustained by complainant Satyavan are CLW over parietal aspect 5 cm away from 1st wound measuring 2cm x 0.5cm x 0.5cm, bruise over left shoulder 3cm x 1cm, bruise over left elbow 5cm x 3cm and bruise over right shoulder 3cm x 2cm. Moreover, it is the case of prosecution that assault was committed by more than one accused and as such, at this stage, it cannot be said that applicant alone is author of injuries sustained by complainant on his shoulder and elbow.

11 Having considered contents of report together with medical report and weapon of assault being wooden stump, which is seized from spot, application is allowed as per the order below :

- i) In the event of arrest of applicant in Crime No.137of 2016 registered with Mulund Police Station, he be released on bail on his executing P.R.Bond in the sum of Rs.20,000/- with one surety in like amount.

- ii) Applicant shall mark his attendance with Investigating Officer on Sunday i.e. 24th July 2016 and thereafter as and when called by Investigating Officer till the filing of charge-sheet.

(P. N. DESHMUKH, J.)