

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 1487 OF 2016

Mr. Rahul Shankar Chafekar	..	Applicant/Accused No.7
vs.		
The State of Maharashtra	..	Respondent

Ms. Sonal Parab i/b. Mr. Rajeev Sawant & Associates, Advocate for the applicant.

Mr. R.M.Pethe, APP, for the State.

CORAM: SMT.SADHANA S.JADHAV,J.

DATE : 25th August, 2016.

P.C.

1. Heard. This is an application under Section 438 of Cr.P.C.

2. The applicant herein is apprehending his arrest in Crime No.40 of 2015 registered at Mandva Sagari Police Station for the offences punishable under Sections 307, 326, 341, 143, 147, 148, 149 and 120B of the Indian Penal Code.

3. It is the case of the prosecution that on 11.10.2015, oone Mr. Milind Gharat lodged a report at the policed station alleging therein that on 11.10.2015, he had received as phone call from his friend Sanket Govind

Raut @ Pintya who had called him at Nandaipada open ground. The first informant had obliged. When he reached the spot, he saw 5 – 6 persons. They dragged him from the motorcycle and mounted assault upon him. All the persons had concealed their faces by handkerchief. That he had sustained fracture and also an injury to his middle finger. That the assailants had referred to one Chotam Sheth. Thereafter, the complainant had told the assailants that he is Milind Gharat. At that very point, the assailants had stopped assaulting him any further. Thereafter, he had called upon his friend Pintya and informed him that he was assaulted by some unknown persons. Thereafter, Sanket Raut had come to the spot and had taken him to the hospital.

4. It appears from the record that the complainant was first taken to Civil Hospital Raigad – Alibag. “History of assault on 11.10.2015 at 1 p.m. by some unknown persons.” The certificate shows that he had sustained one fracture on left tibia with fracture of tibia and a contused lacerated wound and both injuries were described as grievous injuries. Thereafter, the complainant was admitted in Bhatia Hospital. The history given on the Discharge Card of Bhatia Hospital indicates as follows :-

*“Admitted with pain and swelling in left leg since long time.
Pain in right hand simultaneously. History of fall from bike due*

to which inability to walk since one day.”

It is apparent that the injured had given two different stories before two different hospitals.

5. The learned counsel for the applicant vehemently submits that in fact, it is the case of the prosecution that the first informant was assaulted by unknown persons. However, in the course of investigation, no test identification parade is conducted. The applicant had apprehended his arrest and, therefore, had approached the Sessions Court seeking relief under Section 438 of Cr.P.C. The said relief was denied. Thereafter, the investigation was completed and charge-sheet was filed. However, charge sheet was not filed against the present application under Section 299 of Cr.P.C. Subsequently, the applicant had renewed his prayer for pre-arrest bail before the Sessions Court. The learned Sessions Court had observed that the applicant had not disclosed to the Court that his earlier application was rejected and had attempted to mislead the Court. It appears that on that ground alone the application was rejected. The investigation is completed and charge sheet is filed.

6. The learned counsel for the applicant submits that the applicant had given instructions to the learned counsel appearing for the applicant before the Sessions Court. However, for the reasons not known to the

applicant, the learned counsel had not stated the said facts and there was suppression of facts. The learned counsel submits that it shall not be construed that the applicant had any intention to suppress the material facts. As on today, the charge sheet is filed. The papers of investigation do not indicate any specific overt act to the applicant. Moreover, the Court cannot be oblivious of the fact that the injured himself has given two different stories before two different hospitals. By way of supplementary statement, which was recorded after six days, the first informant had improved the story and involved Pintya. All these aspects need to be taken into consideration. Prima facie, custodial interrogation would not be imperative.

7. The observations made hereinabove are restricted to an application under Section 438 of Cr.P.C. and shall not be considered for the purpose of quashing of FIR, discharge application or at the time of trial.

ORDER

- (i) The application is allowed.
- (ii) In the event of his arrest, the applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one solvent surety in the like amount.
- (iii) The applicant shall report to the concerned police station on

four consecutive Sundays between 10 a.m. to 12 noon and co-operate with the investigating agency to the best of his capacity.

The application stands disposed of.

(SMT.SADHANA S.JADHAV, J.)