

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE

ANTICIPATORY BAIL APPLICATION NO.1682 OF 2016

Shakir Ali Mohd.Safi Khan Vs. State of Maharashtra

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders.

Court's or Judge's orders

Mr. C.K. Pendse i/b Milind Dhande for applicant.
Mr. A.S. Patil APP for State.

CORAM : A.S. GADKARI, J.
DATE : 29th September 2016.

- 1) This is an application under Section 438 of Cr. P.C. for pre-arrest in CR No.288 of 2016 registered with Shahunagar Police Station, Mumbai dated 26.7.2016 under Sections 452, 397, 326, 324, 143, 147, 149 of the Indian Penal Code.
- 2) The first information report is lodged by Mr. Anil Katke on 26.7.2016 for the alleged incident which took place in the preceding night of 25.7.2016 between 9.30 p.m. to 9.45 p.m. It is stated by the complainant that, he is a social worker and is an office bearer of a political party. That people from the vicinity come to him for help for mediation and/or for settling their disputes. That on 25.7.2016 at about 9.30 p.m. when he was in his shop, a person of his

acquaintance namely Rizwan Farooqui came to him and told him that he has some monetary transaction with the present applicant and requested the complainant to do mediation for settling the matter. That the applicant along with two to three persons came at the spot. The informant had a discussion with the applicant and the said Rizwan Farooqui. That the complainant told the said Rizwan and the present applicant to settle the dispute and thereafter he went to the shop. It is further stated that after five to ten minutes, the applicant along with 15 to 20 other persons and one Gattubhai came at the scene of offence and assaulted the complainant. It is stated that one of the persons from the said unlawful assembly assaulted the complainant with iron-spade. That he got unconscious at the spot and when he became conscious, he was admitted in Sion Hospital. That the chain made up of gold and which was on his person was found to be robbed in the said incident. In the premise the first information report is lodged.

3) Heard the learned counsel for the applicant and the learned APP. I have perused the documents pertaining to the investigation.

4) The learned counsel for the applicant submitted that the applicant did not play any vital role in the present crime. That the Section 397 of Indian Penal Code has wrongly been applied in the present crime, as there is no specific and categorical allegations against the present applicant. He submitted that the

custodial interrogation of the applicant is not necessary as there is no recovery to be made by the police by taking applicant in custody. He submitted that the applicant is not ordinary resident of Dharavi, but he is residing in Bhiwandi and therefore the case as propounded by the prosecution that applicant came at the spot with 15-20 persons within 5 to 10 minutes as stated in the first information report cannot be accepted. He therefore prayed that the applicant may be granted pre-arrest bail.

5) It is the specific case of the prosecution with categorical allegations against the applicant that after the earlier meeting with the applicant and Rizwan within five to ten minutes the applicant came at the scene of offence with an unlawful assembly of 15-20 persons and thereafter assaulted the complainant with iron-spade. The medical report collected by the Investigating Officer indubitably supports the version of the complainant. It is stated in the medical report that the complainant suffered nasal injury which is grievous in nature. The medical papers further reveal that there is fractures to the medial wall of both orbits coupled with linear indispensable injury on nasal bones. Thus the version of the complainant is duly corroborated by the medical evidence. The custody of the applicant is therefore necessary for revealing the names of the other accused person who were part of the said unlawful assembly and for recovery of the chain of the complainant. The weapon used in the crime is also to be recovered. The

applicant is prime accused in the present crime.

6) Thus after taking into consideration the serious allegations against the applicant and the gravity of offence, this Court is of the view that this is not a fit case to grant pre-arrest bail to the applicant. The application is accordingly dismissed.

(A.S. GADKARI, J.)