

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 2088 OF 2016

1 Ashok Narayan Harpude.

2 Amit Mohal.

... Applicants.

Versus

The State of Maharashtra.

... Respondent.

Mr. Balasaheb R. Deshmukh, advocate for Applicants.

Mr. S.H. Yadav, APP for State.

Mr. Vikram P. Rajpur, PSI, Kothrud Police Station, Pune City.

CORAM : SMT. SADHANA S. JADHAV,J

DATE : DECEMBER 6, 2016

P.C.:

1 Heard the learned Counsel for the applicants and the learned APP for State. Perused the papers.

2 This is an application under Section 438 of the Code of Criminal Procedure, 1973. The applicants herein are apprehending their arrest in Crime No. 563 of 2016 registered at Kothrud Police Station on 19/11/2016.

3 It is the case of the prosecution that on 19/11/2016 one Sachin Konde lodged a reported at the police station alleging therein that on 11/11/2016 the applicant herein had lodged a report against the complainant on the basis of which Crime No. 554 of 2016 was registered for offence punishable under section 323, 324, 504 read with 34 of the Indian Penal Code.

4 According to the complainant, on 19/11/2016 at about 7.15 a.m. he had been to the dairy to fetch milk. Some people had followed him on motor cycle. The applicants were amongst them. They overtook the complainant and assaulted him with stumps and swords. He has attributed specific role to both the applicants. He has further stated that when he raised hue and cry, the assailants had fled from the spot. He had sustained injuries. It is also alleged that the applicant No. 1 threatened him of dire consequences. He went to the house of his friend namely, Ganesh Varpe. He took rest for some time, as he was feeling giddy. Thereafter, he approached the police

station and narrated the incident. The police had given him a requisition and referred him to Sassoon Hospital. He had taken treatment at Sassoon Hospital and thereafter, lodged the report.

5 It is pertinent to note that he had sustained fracture to his right hand and needed to be given sutures to his head.

6 The learned Counsel for the applicants submits that there is a delay in lodging the FIR. Although the incident had occurred in the morning between 7.15 a.m. to 7.30 a.m., the complainant had approached the police station at 6.20 p.m. on 19/11/2016 and the offence was registered in the evening.

7 Perused the injury certificate issued by the D.J. Medical College and Sassoon General Hospital, Department of Radiology. It is clear that the complainant had sustained displaced fracture at the fourth metacarpal bone, also displaced fracture on the back. He had sustained linear abrasion on the left arm, swelling and tenderness, as

well as contused lacerated wound on vertical region. The nature of injury is shown as grievous since he had sustained two fractures. He had given the history of assault at 7.15 am. at Kothrud. He had trauma at right hand, left elbow head injury, trauma on the chest etc. According to the learned Counsel for the applicants, the applicants have been falsely implicated.

8 It is clear from the records that there is no delay in lodging the FIR. The complainant had promptly approached the police station and police had referred him to Sassoon Hospital, where he was examined at 9.15 a.m.. It is in these circumstances that the applicants do not deserve grant of pre-arrest bail under section 438 of Code of Criminal Procedure, 1973.

9 However, it is made clear that the observations made herein above are prima facie in nature and are restricted to the application under section 438 of the Code of Criminal Procedure, 1973. In the eventuality that the applicants appear before the Magistrate, the

application under section 437 of the Code of Criminal Procedure, 1973 be considered on merits of the case without being influenced by rejection of the application under section 438 of the Code of Criminal Procedure, 1973, as the parameters for grant of bail under Section 437 and 438 of the Code of Criminal Procedure, 1973 would be different.

10 The application being sans merits stands rejected and disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)