

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

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 122 OF 2017

1 Shafiq Shaikh.
2 Shaikh Saqlain Shafiq Ahmed. ... Applicants.
Versus
The State of Maharashtra. ... Respondent.

Ms. Anjali Awasthy a/w. Mr. Ashit Husain i/b. Mr. Moinuddin Khan,
advocate for Applicants.

Ms. P.P. Shinde, APP for State.

**CORAM : SMT. SADHANA S. JADHAV, J
DATE : FEBRUARY 1, 2017**

P.C.:

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

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. 237 of 2016 registered at Kurla Police Station for the
offence punishable under section 323, 324, 325, 341, 504 read with

section 34 of the Indian Penal Code. Since the offence alleged against the applicants is bailable offence, the applicants were enlarged on bail.

3 The learned Counsel for the applicants submits that the prosecution had filed an application seeking cancellation of bail. The said application is rejected by the learned Magistrate on 31/1/2017. However, the applicant continues to apprehend arrest, as subsequently section 326, 354 and 354B were added.

4 The learned Counsel for the applicant submits that even according to the complainant the incident was dated 15/4/2016. However, the first information report is lodged on 17/6/2016 and there is no plausible explanation for the inordinate delay in lodging FIR.

5 The investigating officer is present in the court. Upon enquiry made by this Court as to whether custodial interrogation is

imperative, learned APP upon instructions from the Investigating Officer submits that custody of the applicant is necessary for recovery of weapons. This would be an abuse of section 27 of the Indian Evidence Act, as the first information report is itself lodged after 2 months. The first injury certificate shows blunt trauma on the fore arm and wrist of the victim and subsequently, the certificate was obtained by the investigating agency in October, 2016 which shows grievous injury.

6 Taking into consideration the facts of the case as observed above and the compilation of the papers of investigation, this Court is of the opinion that the applicants be granted pre-arrest bail.

7 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 and shall not be considered at the time of deciding the application for discharge or quashing of FIR or at the time of trial.

8 Hence, following order is passed :

ORDER

- (i) The application is allowed.
- (ii) In the event of arrest in C.R. No. 237/2016, the applicants be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- each and one or more sureties in the like amount.
- (iii) The applicant shall report to the concerned police station from 7/2/2017 to 10/2/2017 every day between 10.30 a.m. to 1 p.m. and cooperate with the investigating agency to the best of their capacity.

9 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV, J)