

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

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 182 OF 2017

Ashish Enoch.	... Applicant.
Versus	
The State of Maharashtra.	... Respondent.

Mr. R.J. Baddam i/b. S.R. Lex, advocate for Applicant.

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

Mr. R.B. Varadkar, PSI, Manikpur Police Station, Vasai.

**CORAM : SMT. SADHANA S. JADHAV, J
DATE : FEBRUARY 9, 2017**

P.C.:

1 Heard the learned Counsel for the applicant 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 applicant herein is apprehending his arrest in Crime No. 16 of 2017 registered at Manikpur Police Station on

14/1/2017 for offence punishable under section 326 read with section 34 of the Indian Penal Code.

3 It is the case of the prosecution that on 10/1/2017 Rosepetresia D'Souza lodged a report at the police station that her son namely Arnesh who is aged about 31 years is deaf and dumb. He has studied in deaf and dumb school till 7th standard. The parents could not take care of him and therefore on 22nd October, 2016, the custody of Arnesh was given to the present applicant, who happens to be the son in law of the sister of the complainant. It is contended in the FIR that the complainant had transferred amount in favour of the applicant since he was looking after her son. She was specifically instructed not to meet her son. On 25/12/2016 she had attempted to meet her son. However, the complainant had not been granted permission. On 7/1/2017 the applicant had called upon the first informant and asked her to send her elder son to fetch Arnesh for taking custody. After Arnesh had returned home, she had noticed

that there were several injuries on his person. The parents and family members understood the signs and language of Arnesh. He had demonstrated that he was assaulted by the present applicant with rod, gas pipe and chair. He was examined by Dr. Kirti. The certificate is on record.

4 Perused the papers of investigation. The investigating officer has collected the photographs of Arnesh. It is clear that he had sustained grievous injuries all over his body when he was in custody of the present applicant.

5 The learned Counsel for the applicant submits that the applicant had taken Arnesh to the hospital of Dr. Menon on 5/1/2017 and the doctor had prescribed Betaddin ointment. This itself would indicate that Arnesh had sustained injuries while in custody of the applicant and only when the applicant realised it to be grievous injuries, he asked the complainant to take away the custody of her son. It is

unfortunate that deaf and dumb person has been brutally assaulted by the care taker. It is in this circumstances, the applicant does not deserve the discretionary relief under section 438 of the Code of Criminal Procedure, 1973.

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

(SMT. SADHANA S. JADHAV, J)