

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

ANTICIPATORY BAIL APPLICATION NO. 1442 OF 2017

Mohammed Azim Ibrahim Shaikh ...Applicant

Versus

The State of Maharashtra ...Respondent

WITH

CRIMINAL APPLICATION NO.801 OF 2017

Abdul Kadar Shaikh ... Intervener

in the matter between

Mohammed Azim Ibrahim Shaikh ... Applicant

Versus

The State of Maharashtra ... Respondent.

Mr.Rishi Bhuta for the applicant.

Ms.Veera Shinde, APP for the State.

Mr.Himanshu Shukla for Intervener in APPP No.801 of 2017.

**CORAM: A.M. BADAR J.
DATED: 3rd October, 2017**

PC:-

1. The applicant who is an accused in Crime No.238 of 2017 registered with police station Goregaon for the offence punishable under Section 326, 323, r/w 34 of the Indian Penal Code by this application is seeking pre-arrest bail.

2. Heard the learned advocate appearing for the applicant/accused. By taking me through the remand report dated 20.07.2017, the learned advocate submitted that four accused persons who indulged in assault were already arrested by the police and reasons for commission of crime is also reflected thereof. However, the investigator is changing the stand to implicate the applicant in the crime in question. He drew my attention to various complaints lodged by the present applicant, his tenant as well as his father against the first informant and submitted that the applicant is falsely implicated in the crime in question.

3. The learned APP fairly accepted that the only material against the present applicant is confession of co-accused Modh. Latif Rafique Shah and Eliyas Iqbal Paik.

4. I heard the learned advocate appearing for the first informant. He submitted that accused persons are habitual offenders and the first informant is the whistle-blower having lodged complaints against the applicant. He submitted that sister of the first informant is having room in the SRA project. However, the present applicant indulged in illegal and forceful possession of rooms in the Slum Rehabilitation Authority (SRA) and he had given illegal possession of the room in the SRA to his tenant.

5. I have carefully considered the submissions so advanced and also perused the papers of investigation including the injury certificate.

6. The incident in question took place on 13.6.2017. First Informant Abdul Kadar Shaikh alleged that when he was to Vibgyor school, four unknown assailants, who had masked their faces by wrapping handkerchief assaulted him by means of iron rod and Bambu. They assaulted one Shakira Bano when she tried to intervene. In the First Information Report, it is averred that the first informant had quarrelled with Abdul Salam, Azim, Guddu, Bablu and Saddam over the issue of corruption in the society.

7. The First Information Report itself goes to show that the first informant was unable to identify his assailant. He had suffered fracture of proximal femur of right knee attracting provisions of Section 326 of the Indian Penal Code which is a non bailable offence. It appears that it is not the case of the prosecution that the first informant was assailed by accused persons by indulging in criminal conspiracy. Section 34 of the Indian Penal Code is only pressed in service. On this backdrop, remand report dated 20.7.2017 assumes

importance. According to the prosecution, the assault was by Mohd. Latif, Mohd.Tarif, Mohd. Nijamuddin, Nasir Abdul Rashid the reason thereof was sending the lewd messages to woman.

8. On 25.4.2017 the present applicant lodged the complaint against the first informant and other persons with an allegation that they are giving him threat of false implication in a crime so also that of killing him and his family members. On 2.04.2017 at the instance of tenant of the present applicant, Crime No.156 of 2017 came to be lodged with an allegation that the present applicant wrongfully entered into the tenanted premises of first informant Kalim Shaikh and outraged modesty of his wife so also indulged in wrongful dispossession. Then there is a complaint dated 05.06.2017 lodged by father of the present applicant.

9. It is not seen that the present applicant was present on the spot of the incident and had indulged an overt act. Charge of criminal conspiracy is not levelled at this stage by the prosecution. The incident was preceded by complaints by the present applicant and his family members against the first informant.

10. In view of the matter liberty of the applicant which was protected by the order dated 24th August 2017 needs further protection. Hence, the following order.

ORDER

- (i) The application is allowed.
- (ii) The order dated 24th August 2017 is confirmed on some terms and conditions.
- (iii) In addition, the applicant to report the concern police station on every first Monday of the month in between 11.00 a.m to 1.00 p.m. till filing of the chargesheet.

- (iv) The applicant should not indulge in commission of any crime and he should not contact prosecution witnesses or any person acquainted with facts of accusation against him so as to dissuade him from disclosing the facts to the court or to the Police Officer.
- (v) In view of the disposal of the application, pending application if any stands disposed of.

(A.M. BADAR, J)