

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

ANTICIPATORY BAIL APPLICATION NO.1466 OF 2017

Chintan Pranal Bariya @ Chiko Moria Vs. Union Territory of Diu and Daman

WITH
ANTICIPATORY BAIL APPLICATION NO.1467 OF 2017

Sohil Mansukh Vs. Union Territory of Diu and Daman

WITH
ANTICIPATORY BAIL APPLICATION NO.1468 OF 2017

Pankaj Mansukhbhai Vs. Union Territory of Diu and Daman

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

Court's or Judge's orders

Mr. Ajit Kenjale for applicants in ABA Nos.1466 & 1467 of 2017.
Ms. A.A. Takalkar, APP for State.
Ms. P.H. Kantharia for Respondent No.1.
Mr. K.S. Patil i/b G.P. Shivai for applicant.
Mr. Prashant Jadhav, APP for State.

CORAM : A.S. GADKARI, J.
DATE : 11th September 2017.

1) The applicants are apprehending arrest in CR No.73 of 2017 registered with Diu Police Station, dated 15.7.2017 under Section 143, 147, 148, 149, 307, 323, 504 and 506(2) of the Indian Penal Code.

2) The first information report is lodged by Mr. Shahnavaz Ashif Mower stating that on 14th July 2017 he along with his friend Kamin had been to the marriage ceremony where DJ programme was organized by his aunt's son Hussain Kadar. There were altercations between applicants and the first informant. The first informant thereafter left the said place and had stopped at Aradhana Talkies. At about 00.20 a.m. of 15th July 2017, applicants along with 3 to 4 other unknown persons came at the scene of offence. That the applicant/Pankaj Mansukhbhai assaulted the first informant with an iron ring (kada) which was in his hand and hit it on the head of the first informant. Other two applicants namely Chintan @ Chiko Moria and Sohil Mansukh assaulted the first informant and his friend with fist and kick blows. After people gathered there, applicants left the spot. In the premise the first information report is lodged.

3) Mr. Patil, learned Counsel for the applicant Pankaj Mansukhbhai submitted that the learned Sessions Judge has observed in the impugned Order dated 8.8.2017 that Section 307 of the Indian Penal Code cannot be attributed to the present crime, but Section 326 cannot be ruled out. He submitted that in view of the Judgment of the Constitutional Bench of the Supreme Court in the case of Shri Gurbaksh Singh Sibbia & Ors. Vs. State of Punjab [(1980) 2 SCC 565, a recovery under Section 27 of Indian Evidence Act can be effected, even if the accused is protected by pre-arrest bail under

Section 438. He submitted that the applicant is ready and willing to give recovery of alleged weapon which he used at the time of incident to the police.

4) As far as applicants namely Chintan @ Chiko Moria and Sohil Mansukh are concerned, the role attributed to them is assault by fist blows and general allegations are made against them by the first informant. Injury certificate produced on record of Mr. Shahnavaz Mower did not even remotely suggesting that any injury was caused due to assault by fists and kick blows. Prima facie it appears from the medical certificate issued by Medical Officer, Primary Health Centre, Diu that injuries suffered by Shahnavaz Mower and Hussain Kadar are possible by iron kada and/or by hard blunt object.

5) In view of the above, the applicants in Applicants Nos.1466 and 1467 of 2017 namely Chintan @ Chiko Moria and Sohil Mansukh have made out a case for their release on pre-arrest bail.

Hence, the following Order:

(i) In the event of arrest of the applicant in CR No.73 of 2017 registered with Diu Police Station, the applicants namely Chintan Moria and Sohil Mansukh shall be released on bail on their furnishing PR bond in the sum of Rs.25,000/- each with one or two separate solvent local sureties in the like amount.

(ii) The applicants shall attend the Investigating Officer as and when called

for between 10.00 a.m 2.00 p.m and join the process of investigation till filing of chargesheet.

(iii) The applicants shall not tamper with the evidence and/or influence the prosecution witnesses.

(iv) Anticipatory Bail Application Nos.1466 and 1467 of 2017 are allowed in the aforesaid terms.

6) As far as the applicant namely Pankaj Mansukhbhai in Anticipatory Bail Application No.1468 of 2017 is concerned, in view of the statement made by Shri Patil, learned Counsel, the said applicant for the time being can be granted interim relief.

7) Hence, following Order:

(i) In the event of arrest in CR No.73 of 2017 registered with Diu Police Station, the applicant namely Pankaj Mansukhbhai shall be released on bail on his furnishing PR bond in the sum of Rs.25,000/- with one or two solvent local sureties in the like amount.

(ii) The applicant shall attend the Investigating Officer from 15th September 2017 to 20th September 2017 between 10.00 a.m 2.00 p.m and to join the process of investigation.

(iii) The applicant shall not tamper with the evidence and/or influence the prosecution witnesses.

- 8)** All applications stand adjourned to 22nd September 2017.

(A.S. GADKARI, J.)