

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1800 OF 2017

Mr.Sunil Narendra Thakkar @ Rughani ... **Applicant**
V/s.
The State of Maharashtra ... **Respondent**

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Ms.Sadhna Kumar, Advocate for the Applicant.

Ms.P.N.Dabholkar, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 10th OCTOBER 2017.

P.C. :

1 The applicant/accused in Crime No.434 of 2017 for the offence punishable under Section 326 read with Section 34 of the Indian Penal Code (hereinafter referred to as “IPC” for the sake of brevity) is seeking his release on bail in the event of his arrest.

2 Heard the learned Advocate appearing for the applicant/accused at sufficient length of time. She argued that in fact, it was First Informant Rajesh Tiwari, who was an aggressor. By contacting his men he, telephonically, had called his men to the shop of the present applicant. The learned Advocate further argued that in fact, there was small scuffle between the co-accused and First Informant Rajesh Tiwari. They were pushing and pulling

each other with aluminum rod in their hands, whereas the present applicant was sitting on the cash counter in the shop. He has no role in actual assault. It is further argued that thereafter, First Informant Rajesh Tiwari rushed at the present applicant, obviously, for assaulting him. Then, police came and he lay down. First Informant must have suffering some ailments since beginning. It is further argued that the applicant is having CCTV footage showing the entire incident and it needs to be looked by this Court.

3 The learned Additional Public Prosecutor opposed the application.

4 This Court is considering the matter from the angle where pre-arrest bail can be granted to the present applicant or not and as such, there is no question of examining the CCTV footage at this stage.

5 The present applicant is having a shop named 'Thakkar Dairy'. First Informant Rajesh Tiwari used to supply milk to said shop. The applicant was in arrears of payment of supplied milk. First Informant, therefore, went to the shop of the present applicant for getting payment. First Informant Rajesh Tiwari averred that when he demanded money, present applicant Sunil Thakkar abused him, held him by collar and slapped him. At that

point of time, Balu and Madan came there and he was assaulted by means of wooden log. *Prima facie*, prosecution has invoked Section 34 of the IPC. If two or more persons intentionally do a thing jointly, it is just the same, as if each of them has done the thing individually. In this view of the matter, it cannot be said that the present applicant has no role to play in the assault.

6 Case diary contains report of CT scan of brain of First Informant. It is seen that Rajesh Tiwari had suffered fracture of bone. *Prima facie*, this makes it clear that there is evidence in support of the offence punishable under Section 326 of the Indian Penal Code.

7 Considering the nature of crime and the manner in which it was committed, no case for pre-arrest bail is made out.

8 The application is rejected.

(A.M.BADAR J.)