

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1982 OF 2017

Ajay Santosh Kanojia ... **Applicant**

V/s.

The State of Maharashtra ... Respondent

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Mr.Haresh S.Kukreja, Advocate for the Applicant.

Mr.S.V.Gavand, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 16th NOVEMBER 2017.

P.C. :

1. The applicant/accused in Crime No.484 of 2017 registered at Charkop Police Station for the offences punishable under Sections 326, 323, 504 r/w 34 of the Indian Penal Code, is seeking his release on bail in the event of his arrest by police.
2. Heard the learned advocate appearing for the applicant. He drew my attention to the FIR lodged on 4.11.2017 by injured Jitendra Kanojia. By pointing out the FIR, it is argued that the first informant himself is not aware about the alleged weapon by

which he was assaulted. The learned advocate argued that initially the first informant stated that he was assaulted by hands. The FIR shows that there was no bleeding injury. It is further argued that the FIR shows that the first informant was told that he was assaulted by the paver block and thirdly the first informant averred that he was assaulted by a wooden log. With this the learned advocate appearing for the applicant drew my attention to the cross reports of non cognizable cases because of minor tiffs between the prosecuting party and the accused party. Both the parties immediately after the incident approached police, but police registered non cognizable offences against both of them. The learned advocate further argued that the applicant is falsely implicated. He is a student, who is preparing himself for the Board examination. The certificate used for lodging the FIR is issued by a private hospital and the offence punishable under Section 326 is not made out.

3. The learned Additional Public Prosecutor opposed the application by pointing out the say filed by the investigating officer

opposing the bail application before the Sessions Court.

4. I have carefully considered the rival submissions and also perused the entire material placed on record. The incident in question took place at 10.30 a.m. of 31.10.2017. It is seen that on the same day, both the parties have lodged reports against each other. Those were treated as reports of non cognizable offences.

5. The FIR then came to be lodged on 4.11.2017 by injured Jitendra Kanojia against the present applicant as well as father of the present applicant namely, Santosh. The learned Sessions Judge was pleased to grant pre-arrest bail to applicant Santosh. Application of present applicant Ajay came to be rejected by the learned Sessions Judge on the basis of report of Oscar Hospital Charkop. It is observed by the learned Sessions Judge that allegations against the present applicant are to the effect of giving a blow by a cement block.

6. It is seen from the say filed by the police before the Sessions Court, that on 3.11.2017, the police received information that Jitendra Kanojia (a first informant) is admitted to the Oscar Hospital for medical treatment. Police visited that hospital and inquired from the first informant. It is revealed that first informant Jitendra Kanojia was required to take out the C.T. scan of his head on 3.11.2017 at Dr.Babasaheb Ambedkar Hospital, Kandivali and it was revealed from the said report of the C.T. scan that he had suffered grievous head injury. That is how the first informant Jitendra was admitted to the Oscar hospital on 3.11.2017 for his medical treatment. Then the first information report came to be lodged by Jitendra Kanojia on 4.11.2017. The FIR itself shows that when co-accused Santosh was assaulting Jitendra Kanojia, present applicant came and assaulted first informant Jitendra Kanojia. This explains why Jitendra was unaware of the weapon of assault. He had not suffered any external injury and as the assault on him by the present applicant took place when co-accused Santosh was already assaulting him. Jitendra heard from other eye witnesses that he was assaulted by

a concrete block. At the threshold , the alleged discrepancies in the weapon is of no assistance. The FIR as well as police report shows that first informant Jitendra Kanojia had suffered grievous injury as reflected from the C.T. scan of his head. The FIR itself shows that the present applicant was author of that grievous head injury to the first informant. In this facts situation reflected from the record, merely because the applicant is a student pre-arrest bail cannot be granted to him. The offence is serious causing grievous head injury.

7. In the result, no case is made out for grant of pre-arrest bail. Therefore, the application is rejected.

(A.M.BADAR J.)