

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION No. 2152 OF 2016

Rafique Ibrahim Shaikh	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

Mr. B.D. Joshi, Advocate for the applicant.
Mr. Sooraj S. Hulke. APP for the State.
Mr. S.K. Pandhre, A.P.I., Manmad City Police Station, Thane present.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **20th January, 2017.**

P.C.:

This application for pre-arrest bail is moved by the applicant-accused under section 438 of Cr.P.C. The applicant-accused is prosecuted for the offences punishable under sections 307, 323, 143, 147, 148, 149 of the Indian Penal Code r/w section 37 (1) (3) r/w 135 of the Bombay Police Act, 1951.

2. It is the case of the complainant Yogesh Dilip Patil that on 22nd December 2016, there was a verbal altercation between his brother Ashish Patil and applicant/accused Rafique Shaikh. The police have warned both the parties. On 23rd November 2016 at around 12.15 p.m. the co-accused alongwith applicant/accused Rafique Shaikh arrived where the complainant and his brother and relatives were present. The applicant/accused abused the complainant's brother Ashish Patil, and thereafter they suddenly assaulted the complainant and his relatives. It is

the case of the complainant that applicant/accused Rafique Shaikh gave blow below his chest on stomach with some pointed weapon, co-accused Latif Shaikh Shabbir assaulted him with rod, co-accused Hasan Shaikh Ibrahim and Majid Shaikh assaulted the complainant with wooden stick on his back, and co-accused Firoz Pathan assaulted Ganesh Nimbalkar on his head with iron rod, and thereafter they all went away from there. The complainant thereafter gave information to the police, which is registered at C.R. No. 193 of 2016 with Manmad City Police Station, Nashik on 23rd November 2016. Hence, this Application.

3. The learned counsel for the applicant-accused has submitted that earlier on i.e. 22nd November 2016, applicant/accused Rafique Shaikh was assaulted by the complainant and his friends, and he had lodged a complaint against the complainant and his associates on 23rd November 2016, and the offence was registered against the complainant and his associates at C.R.No. 194 of 2016 with Manmad City Police Station, Nasik under sections 324, 504, 506, 420 r/w 34 of the Indian Penal Code and section 37 (1) (3) r/w 135 of the Maharashtra Police Act. He submitted that there is a political rivalry between the complainant and the applicant/accused. He submitted that the applicant-accused is falsely implicated in the offence, as election of municipal council were to be held on 27th November 2016, wherein the complainant and his uncle and applicant/accused Rafique Shaikh were contesting candidates of different

parties in the election. He further submitted that injury sustained by the complainant is of simple nature and only Ganesh Nimbalkar has suffered one grievous injury.

4. The learned prosecutor opposed the application and has relied on the complaint and the statements of other witnesses. He submitted that there were two incidents of fighting i.e. on 22nd November 2016 and subsequently on 23rd November 2016. He relied on injury certificate of Ganesh Nimbalkar, wherein it is stated that he has grievous injury on his head.

5. Perused the F.I.R and injury certificates of the complainant and Ganesh Nimbalkar. The injury sustained by the complainant is of simple nature, but Ganesh Nimbalkar has sustained one grievous injury alongwith one simple injury. On query, the learned counsel has submitted that the applicant-accused do not have criminal antecedents, except this case. The learned Prosecutor informed the Court that the injured person Ganesh Nimbalkar was discharged from the hospital 8 days after the incident.

6. Pursuant to my earlier order dated 18th January, 2017, today the report from Civil Hospital, Malegaon is received. The medical officer Mr. Dange has informed that the applicant/ccused Rafique Ibrahim Shaikh has sustained injuries on 23rd November, 2016 for which a medical certificate

was issued on 23rd December, 2016 and he had sustained two simple injuries. Another certificate was issued on 30th November, 2016 where on examination of Rafique Shaikh, Mr. Dange noticed grievous and dangerous injuries but those injuries were sustained 24 hours prior to the examination, i.e., he has sustained injuries on 29th November, 2016. It is further mentioned in the report of Mr. Dange that on 29th November, 2016 nearly 2½ hours the patient was not in the ward and at the time of his examination of the injuries on 30th November, 2016 he refused to give history of assault of those grievous injuries.

7. This explanation discloses that this applicant/accused *prima facie* has produced certificate for grievous hurt which was not of the incident which is the subject matter of this C.R. Moreover, the conduct of the applicant/accused, as mentioned in the certificate, creates doubt considering the criminal record.

8. The papers disclose that this applicant/accused was aggressive and had initiated fight. In view of these factors, I am not inclined to grant anticipatory bail. Hence, Anticipatory Bail Application is rejected.

(MRIDULA BHATKAR, J.)