

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

ANTICIPATORY BAIL APPLICATION NO. 21 OF 2018

Nikhil Sanjay Gaikwad.	... Applicant.
Versus	
The State of Maharashtra.	... Respondent.

Mrs. Prabha Badadare, advocate for Applicant.

Ms. S.S. Kaushik, APP for State.

Mr. Madan Ananta Kamble, PSI Khadki Police Station, Pune.

**CORAM : SMT.SADHANA S. JADHAV,J
DATE : JANUARY 9, 2018**

P.C.:

1 Heard the learned Counsel for the applicant and the learned APP for State.

2 This is an application under section 438 of the Code of Criminal Procedure, 1973. The applicant herein is apprehending his arrest in Crime No. 202 of 2017 registered at Khadaki Police Station for offence punishable under section 143, 144, 147, 148, 149, 326, 323,

324, 504 read with section 34 of the Indian Penal Code and section 4(25) of the Indian Arms Act and section 37(1) read with section 135 of the Maharashtra Police Act.

3 It is the case of the prosecution that on 8/8/2017 Mayur Chavan lodged a report at Khadaki Police Station alleging therein that on 7/8/2017 he alongwith his friends Ashish Lokhande, Vishal Waghmare and Mahesh Gore were playing games on their cellphone near Dhobi Ghat. At about 10 p.m. they met some other friends. At that juncture Roman Adsul had questioned him as to why he was staring at them. There was a verbal altercation amongst two groups. Thereafter, the group had followed them upto Bapuji Mandir. Accused Roman Adsul, Abhishek @ Sonya More, Suhas Salve and Tipu @ Sultan had abused the complainant and had mounted assault upon him. He had attempted to flee from the spot when he was chased by Abhishek. The complainant had specifically stated that Suhas had assaulted him with sickle on his back and head whereas

Abhishek had given him fist fight on his nose. Since people had gathered, the assailants had fled from the spot.

4 The learned Counsel for the applicant submits that the statement of the complainant/injured would assume importance since he knew the people who had caused assault upon him and he has not attributed any overt act to the applicant. It is also submitted that name of the applicant does not appear in the FIR. It is also submitted that the co-accused has been granted pre-arrest bail by this Court vide order dated 8/1/2018. Hence, by virtue of doctrine of parity, the present applicant also deserves to be granted pre-arrest bail.

5 As against this, learned APP submits that the applicant herein has criminal antecedent such as Crime No. 162 of 2016 registered at Khadaki Police Station for offence punishable under section 326, 452, 427, 143, 147, 148 of the Indian Penal Code and therefore, he does not deserve to be enlarged on bail.

6 Reverting back to the facts of the case, it appears that the applicant herein is not named in the FIR. However, his name had transpired in the course of further investigation on the basis of the statement of independent witnesses. It is clear from the FIR that the injured had not attributed any overt act to the applicant. In view of this, the applicant deserves to be granted pre-arrest bail by virtue of doctrine of parity.

7 However, it is made clear that the observation made hereinabove are restricted to the application under section 438 of the Code of Criminal Procedure, 1973. The learned trial court shall not be influenced by the same at the time of deciding the application for discharge or quashing of FIR or at the time of trial.

8 Hence, following order is passed.

ORDER

(i) The application is allowed.

(ii) In the event of arrest in C.R. No. 202 of 2017 registered at Khadaki Police Station, the applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs. 25,000/- and one or more solvent sureties in the like amount.

(iii) The applicant shall not reside within the jurisdiction of Khadaki Police Station till 30/6/2018.

(iv) The applicant shall report to Pimpari Police Station once in a week i.e. on every Sunday between 10.30 a.m. to 1 p.m. till 30/6/2018.

(v) The applicant shall furnish his address and contact number, where he would reside till 30/6/2018 to the concerned investigating agency.

9 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)