IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.24 OF 2018

Majid Nisar Khan ¼.Applicant.

Vs.

State of Maharashtra & Anr. ¼.Respondents.

Mrs.Anjali Awasthi, for the Applicant.
Mr.Ameet Palkar, APP for the Respondent-State.
Mr.Subodh Desai with Ms.Nikita Vardhan i/b Kanga & Co., for the Intervenor.

CORAM : A. S. GADKARI, J.
DATE : 7th JUNE, 2018.

P.C.:-

1) By an order dated 12th January, 2018 the applicant was granted interim relief.

2) Heard the learned counsel for the applicant, the learned counsel for the first informant and the learned APP for the State. Perused the record.

3) The First Information Report is lodged by Mr.Rajesh T. Shinde on 29.11.2017. It is stated that he was working as office boy with Nobel Chambers, Janmabhumi Marg, Mumbai ±01, for the last nine years. That on 28.11.2017, after completing his work in the

evening at about 9.30 pm, when he was about to leave the office, some unidentified persons entered into the office and created ruckus. One of the persons assaulted him on his head with a stick causing injury to him. He thereafter left the office premises to go to his house. When he was on his way he received a phone call from his colleague namely Bhavesh Shelar informing him that the owner of the complainant has directed him to go to St.Georges Hospital, take treatment and lodge FIR, accordingly, the first informant lodged the present report on 29.11.2017 at about 2.50 a.m.

4) The name of the applicant is mentioned in the proforma application as a known accused. That police arrested the applicant on 29.11.2017 and produced him before the concerned Metropolitan Magistrate at Ballard Pier, Mumbai. The learned Metropolitan Magistrate was pleased to release the applicant on bail by its order of even date.

5) The record further indicates that police have thereafter added Section 452 of Indian Penal Code to the present crime on 09.12.2017 and the report to that effect has been submitted to the concerned Metropolitan Magistrate.

An intimation about the same has been given to the applicant

directing him to remain present before the concerned Metropolitan Magistrate for further proceedings. The applicant, therefore, approached the Sessions Court by way of preferring Anticipatory Bail Application 1987 of 2017, which has been rejected by the impugned order dated 04.01.2018.

6) As stated earlier, the First Information Report has clearly mentioned about the fact that some persons entered into the office of the first informant on 28.11.2017 at about 9.30 pm. Section 452 was not applied to the said crime at the first instance and only Sections 323, 324, 504 r/w.34 of Indian Penal Code were applied. That after the applicant was granted bail by the concerned Metropolitan Magistrate on 29.11.2017, in my view, as an afterthought and with a view to increase the gravity of the offence, the police have added Section 452 of Indian Penal Code to the said crime.

The learned counsel for the first informant submitted that, as the earlier Investigating Officer did not apply proper Sections to the present crime, they had preferred Criminal Writ Petition No. 94 of 2018 for transfer of investigation, which has been disposed off by the Division Bench of this Court by its order dated 25.04.2018 on the ground that, the investigation of the present case has already been

taken charge of by other officer.

7) Be that as it may, the applicant has been released on bail by an order dated 29.11.2017 for the offences mentioned in the FIR dated 28.11.2017. The fact of trespass was well within the knowledge of the Investigating Agency and so also of the first informant. Despite the said fact, the first informant did not take immediate steps for adding Section to the said crime and it is only after the concerned Metropolitan Magistrate released the applicant on bail on 29.11.2017 and by way of afterthought, Section 452 of Indian Penal Code has been added to the present crime.

8) In view thereof and in the opinion of this Court, the custody of the applicant is not necessary for further investigation of present crime and the applicant is entitled to be protected by pre-arrest bail.

9) Interim relief granted by order dated 12.01.2018 is hereby confirmed.

Application is accordingly allowed.

(A.S. GADKARI, J.)