

VPH

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION No. 427 OF 2018

Anand Nivrutti Kamthe	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

Mr. Aniket U. Nikam, for the Applicant.

Mr. Vinod Chate, APP for the Respondent – State.

CORAM : P. N. DESHMUKH, J.

DATE : MARCH 19, 2018

PC :-

1. Heard learned counsel for Applicant and learned Additional Public Prosecutor. On the earlier date, Applicant sought interim protection contending that only allegation against Applicant is that of committing assault on the nose of complainant by fist blows. On that day, matter was adjourned for want of injury certificate to show that he has sustained fracture on the nose. By referring to contents of report, it is submitted that even if complainant has sustained fracture as aforesaid, complainant has stated that Applicant has assaulted him by fist blows on his nose, which act cannot cause

fracture of nasal bone. Perusal of case diary reveals that in the course of same transaction accused Anand Kamthe gave fist blows on nose and Amit Salunkhe assaulted on the head by piece of tile and had also extended threats. In that view of the matter, there appears substance in the submissions advanced on behalf of Applicant attributing fracture injury to co-accused Amit Salunkhe, who had assaulted complainant by tiles. Even otherwise, according to report, the only act attributed to Applicant is extending threats to complainant and to commit assault on nose by fist blows, and co-accused Amit committed assault by tiles on his head, and thereafter Kiran poured petrol which was carried by him in the plastic bottle on the person of complainant and his motor cycle, and in the meantime, complainant's father-in-law Balwant and brother-in-law Mayur arrived on the spot and rescued him.

2. In view of presence of two eye witnesses, acts attributed by the complainant on the spot, when their statements are perused, they are found contrary to the case of complainant, as mentioned in the report and both are, in fact, silent about Applicant's committing assault on nose by fist blows. Apart from these witnesses who are mentioned in the FIR, statement of other eye witness Shahrukh Khan

also does not establish any act of assault by fist blows by Applicant on the nose of complainant.

3. In view of statements of eye witnesses as aforesaid which are prima-facie found contrary to the contents of report and from the injury report though complainant is found to have sustained fracture of nasal bone, there is nothing to establish involvement of Applicant in causing said fracture of nasal bone. Application is therefore, allowed as per order below:

- (i) In the event of arrest of Applicant in C. R. No. 31/2018 registered by Bibwewadi Police Station, Pune, he shall be released on bail on his executing PR bond in the sum of Rs. 25,000/- with one surety in the like amount;
- (ii) Applicant shall attend Investigating Officer for a period of one week from 22.3.2018 and thereafter as and when called till filing of the charge-sheet;
- (iii) It is made clear that Trial Court shall not get influenced by any of the observations made herein which are prima-facie in nature, and shall

independently evaluate evidence in the trial;

- (v) Application is disposed of in the aforesaid terms.

Sd/-
[P. N. DESHMUKH, J.]

Vinayak Halemath