

Anand

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

ANTICIPATORY BAIL APPLICATION NO. 689 OF 2018

Rohit Radheshyam Sonvaniya .Applicant

Vs.

The State of Maharashtra .Respondent

**WITH
CRIMINAL APPLICATION NO. 487 OF 2018
(For Intervention)
IN
ANTICIPATORY BAIL APPLICATION NO. 689 OF 2018**

Rahul Nabakumar Shome .Intervenor

IN THE MATTER OF

Rohit Radheshyam Sonvaniya .Applicant

Vs.

The State of Maharashtra .Respondent

Mr. K. Shyam i/b. Mr. V. T. Dubey, Advocate, for the Applicant
Mr. M. G. Patil, APP, for the Respondent – State
Mr. Niteen Pradhan i/b. Mrs. Shubhada Khot, Advocate, for the
Intervenor

CORAM : REVATI MOHITE DERE, J.

DATE : 23.04.2018

P.C.

. Heard learned counsel for the parties.

2. By this Application, the Applicant seeks pre-arrest bail in connection with C. R. No. 114 of 2018 registered with the Chembur Police Station, Mumbai, for the alleged offences punishable under Sections 326, 323 & 504 of the Indian Penal Code (for short 'IPC').

3. Learned counsel for the Applicant submitted that no offence as alleged is disclosed as against the Applicant under Section 326 of IPC, considering the fact that no weapon was used in the commission of the offences. He submitted that at the highest, the offence would be one under Section 325 of IPC, which is bailable. He further submitted that “teeth” cannot be said to be a weapon under Section 326 of IPC. Learned counsel for the Applicant further submitted that even the Applicant had received injuries i. e. bite marks and scratch marks on his body, in the said incident. He further submitted that both, the Applicant and the injured – Complainant have been discharged from the hospital and as such, custody of the Applicant is not warranted.

4. Learned APP opposed the Application. He submitted that “teeth” is an instrument for cutting and serves as a weapon and as such, an injury caused by a bite, would constitute an offence punishable under Section 326 of IPC. Learned APP relied on the Judgment of the

Allahabad High Court in the case of *Jamil Hasan Vs. The State*, reported in **1974 CRI. L. J. 867** in support of his submission. Learned APP submitted that in the present case, the Applicant bit off the Complainant's ear i. e. ear was severed. He relied on the photographs of the ear, which was severed from the body, due to the Applicant's bite. Learned APP on the instructions of the investigating officer states that apart from Section 326, the prosecution will also be adding 326A to the present case. Mr. Pradhan, learned counsel for the Complainant, supported the learned APP.

5. Perused the papers. According to the Complainant / injured, on 17.03.2018 at about 10.30 p. m., he, the Applicant as well as one Akshay had gone to BKC for dinner and on their return after dinner, the incident took place in the car at about 12.45 a. m.. The Complainant has alleged that on 18.03.2018 at about 12.45 a. m., when he and the Applicant were gossiping with each other, suddenly the Applicant started assaulting and abusing him and bit off his right ear, as a result of which, his right ear was completely severed from the body. No doubt the Applicant has also sustained minor scratch marks and minor bite mark on his person, however, the grievous injuries sustained by the Complainant cannot be brushed away or ignored. The photographs show

that the Complainant's right ear was completely severed from his body, due to the bite. The Medical Certificate issued by the Bombay Hospital shows that the history given was of 'assault by a known person and of human bite (amputation of right ear at the root of the ear). Loss of complete pinna of right ear'. Although, it was vehemently argued by the learned counsel for the Applicant that Section 326 of IPC would not be applicable, learned APP on the instructions of the investigating officer states that the police would be applying Section 326A of IPC to the aforesaid C. R.. Whether or not Section 326 applies or not, is a matter which will be decided by the trial Court. The fact remains that apart from Section 326, the police will be applying Section 326A to the case. Prima facie, it cannot be said that no offence as alleged is disclosed against the Applicant, either under Section 326 or under Section 326A of IPC. Having regard to the manner in which the incident has taken place and the manner in which the Applicant bit off the Complainant's ear resulting in severing of the ear, this is not a fit case to grant pre-arrest bail to the Applicant. Hence, the Application stands rejected.

6. It is made clear, that the observations made herein are prima facie for deciding the aforesaid Application and if an Application for regular bail is filed, the same shall be considered on its own merits,

uninfluenced by the observations made in this order.

7. In view of disposal of the Application, the Intervention Application, being Cri. Appln. No. 487 of 2018 does not survive and same stands disposed of accordingly.

(REVATI MOHITE DERE, J.)