

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

ANTICIPATORY BAIL APPLICATION NO. 838 OF 2017

Mohammad Wasim Shaikh

s/o Karimulah Shaikh

V/s.

The State of Maharashtra

... Applicant

... Respondent

Ms. Sonal Parab i/b Rajeev Sawant & Asso. for the Applicant.

Ms. A.A. Takalkar, APP for the Respondent/State.

PSI Ramchandra Bhosale attached to Shivaji Nagar Police Station.

CORAM : A.S.GADKARI, J.

DATE : 12th FEBRUARY, 2018

P.C.:

. By an Order dated 05.05.2017, the Applicant was granted interim relief.

2 Heard the learned Counsel for the Applicant and the learned APP. Perused the record of investigation.

The first information report dated 20.09.2016 is lodged by Smt. Asarfun Abdul Majid Shaikh, the mother of victim Firoz Shaikh. It is stated that Firoz had started a small workshop of Zari work at Bainganwadi, Govandi, Mumbai and was residing in the said workshop along with his workers. It is alleged that, due to enmity arising out of business, on 06.08.2016 at about 7.00 p.m., the Applicant along with other accused persons assaulted Firoz and his friend Rizawul with iron rod, fist and kick blows. It is stated that initially on 07.08.2016 when the said Firoz was writhing in pains, his friend Rizawul initially took him to Shatabdi Hospital, wherein Doctor told him that, bone of his left leg

was fractured. That the informant told Rizawul to bring Firoz to Delhi where she was stationed and thereafter, Firoz was treated at B.M. Gupta Hospital at New Delhi. In the premise, the first information report is lodged.

3 The record indicates that as the basic requisite of investigation i.e. Statement of Firoz was not recorded by the Investigating Officer, this Court had expressed displeasure towards it on 05.05.2017 and subsequently, under the direction of this Court, the statement of Firoz has been recorded belatedly on 19.12.2017 by the police. In his statement, Firoz has categorically stated that, it is the Applicant who assaulted him with an iron rod on his left leg, due to which his bone was fractured. Medical Certificate on record duly corroborates the said version.

4 The learned Counsel for the Applicant submitted that in pursuance of the directions issued by the Court, the Applicant has attended the Police Station on several occasions and therefore, his custody at this belated stage is not necessary.

5 The Supreme Court in the case of *State Rep. by the C.B.I. v/s Anil Sharma reported in 1997 Supreme Court Cases (Cri) 1039* has held that, custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favorable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the

suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual.

6 It prima facie appears that the initially due to fear of terror of the Applicant, the said Firoz had to leave his workshop and had to go to Delhi for further treatment. Prima facie, it appears that the Applicant is having influence over the Investigating Officer and therefore, he was loath in investigating the present crime and despite recording displeasure about investigation on 05.05.2017, the statement of Firoz was recorded only on 19.12.2017. Thus, prima facie it appears that apart from the serious offence committed by the Applicant, the Applicant is having influence over the Investigating Agency due to which there is delay in recording the statement of victim Firoz has occurred. The weapon used in the present crime is yet to be recovered and recovery of said weapon is not possible without there being custodial interrogation of the Applicant.

7 In view of the above and after taking into consideration the serious allegations against the Applicant and the gravity of the offence coupled with the fact of necessity of recovery of the weapon, this Court is of the view that the Applicant does not deserve to be protected by pre-arrest bail.

8 Application is accordingly, rejected.

(A.S.GADKARI, J.)