

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

BAIL APPLICATION NO. 1915 OF 2018

Baba Harun PatelApplicant

V/s.

The State of MaharashtraRespondent

Mr. Kuldeep S. Patil for the applicant.

Mr. S.H. Yadav, APP for the State.

Mr. S.B. Chavan, Police Sub Inspector, Panvel Taluka Police
Station, Navi Mumbai, present.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED: 12th OCTOBER, 2018.

P.C.:

. This is an application under Section 439 of Criminal Procedure Code filed by the aforesaid applicant, who has been arrested in C.R.No.56/2018 registered at New Panvel Police Station, Navi Mumbai, Dist. Raigad for offences punishable under sections 313, 323, 504 of the Indian Penal Code.

2. Heard Mr. Kuldeep Patil, learned counsel for the applicant and Mr. S.H. Yadav, learned APP for the State. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

3. The aforesaid crime was registered pursuant to the first information report lodged by one Hussain Mehtab Ali Shaikh. The first information report prima facie reveals that the wife of the applicant suspected that the applicant was having illicit relationship with the wife of the first informant. On 24/03/2018, at about 08:00 p.m., Bijan, the wife of the first informant went to the house of the applicant to question the applicant and his wife as to why they were defaming her. There was an altercation between them over the said issue. It is alleged that the applicant kicked the wife of the first informant on her abdomen knowing that she was pregnant. As a result of this incident, the wife of the first informant started bleeding and had a miscarriage.

4. The statement of the injured prima facie reveals that on 24/03/2018, she had gone to the house of the applicant. There was an altercation between her and the applicant. She claims that the applicant caught hold of her and kicked her on the stomach. The statements of other witnesses also prima facie reveal that the applicant had kicked the injured Bijan on her stomach. The medical report prima facie reveals that said Bijan was four months pregnant and that she had a miscarriage / incomplete abortion.

5. Thus, the material on record prima facie indicates that in the course of quarrel between the applicant and Bijan, the applicant had kicked her on her stomach which had resulted in miscarriage. In my prima facie view, the alleged offence could not come within the purview of section 313 of the Indian Penal Code but would attract provisions of section 315 of the Indian Penal Code which is punishable with maximum imprisonment of 10 years. Furthermore, in order to attract provisions of section 315, there has to be prima facie material to show that the act was done with an intention of preventing the child from being born. At this stage, it cannot be said that the applicant was aware that Bijan was four months pregnant and/or that he had kicked knowing fully that she was pregnant and with an intention of causing miscarriage or preventing the child from being born.

6. The applicant is a permanent resident of Chittapur, Tal. Jawargi, Gulbarg, Karnataka. There are no chances of the applicant absconding and/or thwarting the course of justice. The applicant has no criminal antecedents. In the light of above, the Application is allowed on the following terms and conditions :-

(a) The applicant who is arrested in C.R.No.56/2018 registered at New Panvel Police Station, Navi Mumbai, Dist. Raigad is ordered to be

released on bail on furnishing bail bonds of Rs.30,000/- (Rupees Thirty Thousand) with one or two solvent sureties in the like amount.

(b) The applicant shall furnish his permanent address and temporary address, if any, and his contact details to the concerned Court.

(c) The applicant shall not change his residential address without prior intimation to the concerned Court.

(d) The applicant shall not interfere with the injured and other witnesses in any manner and shall not tamper with the evidence.

(SMT. ANUJA PRABHUDESSAI, J.)