

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

CRIMINAL APPLICATION NO.1734 OF 2018

Zubair Ahmed Abdul Gaffar

.. Applicant

Vs.

State of Maharashtra

.. Respondent

.....
Mr.Amar H. Nagi, Advocate for the Applicant.
Mr.Arfa Sait, APP for the Respondent - State.
Mr.S.M. Surve, PSI, Kurla Police Station, present.
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CORAM : PRAKASH D. NAIK, J.

DATED : AUGUST 30, 2018.

P.C. :

This is an application for anticipatory bail in connection with CR No.265 of 2018, registered with Kurla Police Station, Mumbai. Initially the offences were registered under Sections 325, 504, 506(II) read with 34 of Indian Penal Code. First Information Report was lodged on 13th July, 2018. The case of the prosecution is that in the year 2016, the complainant gave Rs.22,00,000/-, to one Salim Koslawala for purchase of room. Mr.Koslawala is in business of construction. He did not provide the premises to the complainant nor refunded the amount. Applicant then approached one of their friend. Meeting was held

and the accused had assured him that they will recover the said amount from Koslawala. They demanded commission for recovery. At the same time, the accused gave an amount of Rs.2,00,000/-, to the complainant. Since the accused could not accomplish the act of recovering money from Koslawala, they showed their inability to the complainant and demanded an amount of Rs.2,00,000/-. On 3rd June, 2018, the complainant along with his minor son aged about five years went to the hotel. At that time, the accused came to the said place. The complainant was assaulted by fist and kick blows. He was taken into the vehicle allegedly belonging to the accused to another place and he was assaulted. The complainant's son was also in the car. The accused issued threats that hurt will be caused to the complainant's son who was in the car.

2 Subsequently, one of the accused was arrested by the police. He preferred an application for regular bail, which was allowed by order dated 18th July, 2018. Therefore, charge under Section 365 of IPC was added.

3 The applicant preferred anticipatory bail application before the Sessions Court, which was rejected on 18th July, 2018.

4 Learned advocate for the applicant submits that he has been falsely implicated in this case. He has taken injured persons to the hospital. The co-accused is arrested and granted bail. Charge under Section 365 was added subsequently. There is no evidence to establish the said charge. No weapon was used in assaulting the injured person. Therefore, custodial interrogation of the applicant is not necessary.

5 Learned APP, however, submitted that the accused were involved in serious crime. They had promised the complainant that they would recover the amount from Koslawala, which is a suspicious deal and required to be investigated. Applicant was along with the co-accused while assaulting the victim. The minor son of the victim was also in the car at the time of incident. Applicant has not furnished his correct address. It is submitted that even in this application, the defendant's address is provided by the applicant. The details of the car used in commission of crime, which was brought by the applicant are required to be investigated. Learned APP also pointed out the injury certificate which refers to the injuries sustained by the complainant on head and ear. It is, therefore, submitted that the

application be rejected.

6 Having gone through the FIR and the other documents on record, it is apparent that the FIR was registered for the offences punishable under Sections 325, 504, 506 (2) read with Section 34 of IPC. The offence under Sections 325 and 504 are bailable. Section 365 was invoked subsequently. Section 365 relates to the offence of kidnapping or abduction with a view to secretly confine the person. The co-accused was arrested and is granted bail by the learned Magistrate 51st Court, Kurla Mumbai. While granting bail, it was observed that during investigation, nothing was recovered at the instance of the accused. The offence is triable by the Court of learned Magistrate. There are no criminal antecedents against the said accused and there is no possibility of jumping bail. Prosecution could not point out before the Sessions Court or this Court whether there are any criminal antecedents against the applicant. Taking into consideration the over all circumstances, more particularly, the fact that invocation of charge under Section 365 is debatable, which would be decided in the course of trial. The victim was assaulted by fist and kick blows. No weapon was used in commission of offence. The co-accused has already granted bail, as stated hereinabove.

In the circumstances, this application can be allowed on certain conditions.

7 Hence, I pass the following order:

:: ORDER ::

- (i) Anticipatory Bail Application No.1734 of 2018, is allowed;
- (ii) In the event of arrest of the applicant in connection with CR No.265 of 2018, registered with Kurla Police Station, Mumbai, the applicant be released on bail on furnishing P.R. Bond in the sum of Rs.20,000/-, with one or more sureties in the like amount;
- (ii) The applicant is directed to report to the Kurla Police Station, Mumbai, once in a week on Saturday between 10:00 a.m. to 12:00 noon, till the filing of the charge-sheet;
- (iii) Applicant shall furnish his permanent residential address to the investigating officer;

(iv) Applicant shall not tamper with the evidence;

(iv) Anticipatory Bail Application No.1734 of 2018,
stands disposed of.

(PRAKASH D. NAIK, J.)