

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

ANTICIPATORY BAIL APPLICATION NO. 2088 OF 2018

Santosh Atmaram Shelar	... Applicant
Vs.	
The State of Maharashtra	... Respondent

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Mr. Swapnil Wagh for applicant.
Mr. Arfan Sait, APP for the Respondent-State.
Mr. Dhavan, PSI, West Control is present.

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**CORAM : PRAKASH D. NAIK, J.
DATE : 15th OCTOBER, 2018.**

P.C.

1. The applicant apprehends arrest in connection with CR No. 264 of 2017 registered with MIDC Police Station for the offences punishable under sections 326, 120B read with 34 of the Indian Penal Code. The First was lodged on 21st June, 2017.

2. It is the case of the prosecution that on 20th June, 2017 at about 10.30 p.m. behind Jacob Company, Kondivita, M.I.D.C Andheri injured Ramji Ahir who is resident of Andheri (East) was proceeding towards J.B. Nagar, on his motor-cycle. Two unknown persons came from behind and they gave a dash to the motorcycle of Ramji, due to which, he fell down. The said persons abused the injured. One of them took out knife and tried to assault Ramji. The injured tried to flee from the place to save his life. One of

them gave a blow on his neck and due to that Ramji fell down. One of them gave five blows of knife on the back of Ramji. Somehow, Ramji managed to reach Imran Court Society. The security guards intervened to save him and at that time two persons fled from the place of incident. The injured was taken to Cooper Hospital where he was treated. The FIR was lodged on 21st June, 2017. During the course of investigation the assailants namely Kannan Chinna Durai @ Bada Kanna and Kannan Salvam Swami @ Chotta Kanna were arrested. During the course of the interrogation, the said accused disclosed the involvement of the applicant. It is alleged that the injured was assaulted by the assailants at the instance of the applicant. On completing investigation chargesheet has been filed against the arrested accused.

3. The applicant preferred an application for anticipatory bail before the Sessions Court viz ABA No. 907 of 2017. When the Court was not inclined to allow the prayer for anticipatory bail, the said application was withdrawal and disposed off as withdrawn vide order dated 5th August, 2017. In pursuant to filing of chargesheet against the arrested accused, the applicant preferred another application for anticipatory bail before the Sessions Court

viz. ABA No. 1227 of 2018. The said application was rejected on 19th September, 2018.

4. Learned counsel for the applicant submits that the applicant has been falsely implicated in this case. There is no evidence to show the complicity of the applicant in the said crime. The prosecution is relying on the statement of the accused who were arrested. It is submitted that there is no evidence to corroborate the involvement of the applicant in the present case. Except the statement of co-accused, there is no cogent evidence to show the complicity of the applicant in the said crime. It is submitted that as per Section 25 of Indian Evidence Act, the statement of the co-accused is not admissible against the other accused. The chargesheet against the main accused who were attributed overt act of assaulting the injured is already filed. They were arrested and for substantial period of time they were in custody. The chargesheet does not whisper any iota of incriminating material against the applicant except the statement of the co-accused. It is submitted that the co-accused with a view to absolve himself from the crime has suppressed the facts and gave false and misleading statement implicating the applicant. The applicant was not named in the First Information Report and no role is attributed to him by

the complainant. He was not present at the spot where the alleged incident took place. He was arraigned as accused subsequently after the registration of the FIR solely on the basis of the statement of accused No.1. It is further submitted that the offence as defined under Section 326 of Indian Penal Code is not made out in the present case. The injury certificate appended to the chargesheet clearly shows simple injuries and therefore the entire allegation of complainant is turned out to be false and concocted. It is submitted that the injuries reflected in the certificate does not constitute grievous hurt as defined under Section 320 of Indian Penal Code. None of the ingredients to apply the provisions of Section 326 are made out. It is submitted that in the absence of injury certificate certifying grievous hurt, no criminal charge under Section 326 of Indian Penal Code can be made out by the prosecution and therefore no custody of the applicant can be sought. The co-accused being prime accused has already been released on bail. There is no evidence in the chargesheet against the applicant and nothing is to be recovered and discovered at the instance of the applicant

5. Learned APP submitted that the applicant is the master mind behind the attack on the complainant. The co-accused had

assaulted the complainant at the instance of applicant. It is submitted that during the course of investigation it was revealed that the applicant had furnished the photograph of the complainant to the co-accused and instructed them to cause injury to the complainant. It is submitted that at this stage for the purpose of investigation, the information disclosed by the co-accused can be considered. It is submitted that the applicant is absconding. It is submitted that there are several cases registered against the applicant. Learned APP pointed out the report tendered by the police which refers to six cases registered against the applicant with Dindoshi Police Station, one case each registered with Jogeshwari Police Station and Korar Police Station Mumbai. Two cases each registered with Meghwadi Police Station and Andheri Police Station. One case each registered with MIDC Police Station, Kasturba Police Station, Dhaisar Police Station and Aarey Police Station. The report also indicate that preventive proceedings were initiated against the applicant under Sections 107 and 110 of Criminal Procedure Code. It is therefore submitted that the application for anticipatory bail be rejected. Learned counsel for the applicant however submitted that in two cases registered with Dindoshi Police Station and Kurar Police Station,

the applicant was tried before the Court of learned Metropolitan Magistrate and he has been acquitted of the said offences. Learned APP further submitted that the complainant had sustained severe injuries. Initially he was treated at Cooper Hospital. Thereafter he was treated at private hospital. It is submitted that the nature of injury, the pain sustained by the complainant clearly makes out the offence under Section 326 of Indian Penal Code. It is further submitted that the applicability of Section 326 can be considered at the time of trial. Presently, the medical certificate and the treatment administered to the complainant *prima-facie* establishes the charge under section 326 of Indian Penal Code.

6. The First Information Report was registered on 21st June, 2017. The complainant was assaulted by two unknown persons. The said accused obstructed the complainant while he was proceeding on his motor-cycle and assaulted him by knife. The complainant has stated that the accused gave blow by knife on his neck and several blows on his back. Both the accused were attributed overt act of assaulting by knife. They chased him while assaulting. The security guards of society intervened and at that point of time, the assailants fled away from the place of incident. The complainant had sustained about seven injuries in the nature

of CLW on his back and elbow with sharp weapon. No doubt the injury certificate indicate that the injuries were simple in nature. The complainant was initially treated at Cooper Hospital and thereafter he was admitted to Chandan Medical Centre and Nursing Home. The certificate issued by the latter hospital dated 27th June, 2017 which is the part of the chargesheet filed against the arrested accused indicate that the complainant having multiple wound due to injury with sharp knife was admitted to Cooper Hospital. He was subsequently admitted to the said hospital due to severe pain in the injured area, chest and abdomen and blood pressure. Since 22nd June, 2017 till date the patient had undergone city scan of abdomen, chest and brain. The complainant was hospitalized with Chandan Medical Centre from 22nd June, 2017 till 28th June, 2017. The certificate dated 1st August, 2017 mentions that the injured was advised complete bed rest for a period of two weeks i.e upto 12th July, 2017. He was also advised for follow up treatment. It is pertinent to note that the grievous hurt has been defined under Section 320 of Indian Penal Code. The said provisions refers to the category of injuries which amounts to grievous hurt. The category eightly refers to any hurt which endangers life or which causes sufferer to be

during the space of twenty days in severe bodily pain or unable to follow its ordinary pursuits. The medical certificate relied upon by the prosecution as above would show that the complainant was in a severe pain and he was undergoing treatment for the same. The pain had ensued for a long period of time as stipulated in the medical certificate. Complainant had sustained several injuries by knife. It is therefore the question about the applicability of the said provision will be decided at the time of trial. Learned counsel for the applicant also pointed out the discharge summary issued by the Cooper Hospital wherein it is mentioned that the patient is stable. Taking into consideration the nature of injuries sustained by the complainant and the treatment given to him in the Cooper Hospital as well as the private hospital subsequently shows that the complainant was undergoing treatment and had also sustained pain over a period of time. It is pertinent to note that the applicant is a history sheeter having several criminal antecedents against him. It is also necessary to note that the FIR was registered on 21st June, 2017. The co-accused were arrested. During the course of investigation the involvement of the applicant was disclosed. The clues given by the co-accused during the course of investigation showing the involvement of other persons

can be considered for the purpose of investigation. Thus, *prima-facie* the involvement of the applicant was shown by the prosecution. It is also relevant to note that the applicant had initially preferred an application for anticipatory bail before the Court of Sessions which was withdrawn on 5th August, 2017 when the Court was not inclined to allow the said application. Thereafter, applicant preferred another application on 19th September, 2018 which is also rejected. It is necessary to consider that the second application was preferred almost after one year from the date of withdrawal of the first application. Applicant was therefore not available for the purpose of investigation for a long period of time. In the light of aforesaid circumstances, no case for grant of anticipatory bail is made out. Hence, I pass the following order.

ORDER

- i. Anticipatory Bail Application No. 2088 of 2018 stands rejected.

(PRAKASH D. NAIK, J.)

Sachidanand
Kuttan Nair

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by Sachidanand
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