

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

CRI.ANTICIPATORY BAIL APPLICATION NO.2417 OF 2018

Khan Mohd. Yusha Shamim

.. Applicant

Vs.

State of Maharashtra

.. Respondent

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Mr.Rahul Arote, Advocate for the Applicant.

Mr.S.R. Agarkar, APP for the Respondent – State.

Mr.V.M. Khillare, PSI, Bhoiwada Police Station, Bhiwandi, District
– Thane.

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CORAM : PRAKASH D. NAIK, J.

DATED : NOVEMBER 27, 2018.

P.C. :

This is an application for anticipatory bail in connection with C.R.No.I-176 of 2018, registered with Bhoiwada Police Station, Bhiwandi, District – Thane, for the offences punishable under Sections 326, 143, 147, 148, 149, 323, 504 and 506 of Indian Penal Code (“IPC”, for short).

2 The prosecution case is that the complainant is running a cloth shop in front of Babu Chinu Building at Bhiwandi. One Talib Ansari was having shop of cloth accessories nearby his shop. On 21st October, 2018, at about 2:30 p.m., Talib Ansari had kept one table in front of his shop. Due to which there was

exchange of words between his brother Sajid and Talib Ansari. It is alleged that the complainant was assaulted by Adnan, Shadab, Nish, applicant and three other unknown persons by fist and kick blows. Complainant and others managed to ran away from the place of incident. They intimated the incident to their uncle Sarfaraj. In pursuant to that, Sarfaraj, Ajaj Ansari, Ashraf and Shadab came at the spot and the assailants were questioned about reason for assault. Again there was assault by the accused. According to complainant, Shadab assaulted by wooden log on his head, Adnan had assaulted Ansari and Sarfaraj by iron rod. On account of assaulted Sarfaraj has sustained injury to his finger. The accused also assaulted Ashraf. Subsequently, First Information Report was registered.

3 The role attributed to the applicant is having assaulted the complainant and others by fist and kick blows. On perusal of the FIR, it is apparent that the incident had occurred at spur of moment. There was no pre-mediation. Learned APP, however, pointed out that the statement of injured Sarfaraj was recorded on 23rd October, 2018, in which he has attributed overtact of assault to the applicant by alleging that the applicant had assaulted by giving a blow of wooden log on his shoulder.

4 Learned advocate for the applicant submitted that the applicant is 20 years old boy and is a student. The actual role that is attributed to him is giving fist blows along with other assailants. I have perused the FIR as well as the statement of injured Sarfaraj Ansari. The complainant has specifically stated about that the applicant had assaulted him and others by fist and kick blows. The complainant has also stated that Sarfaraj was assaulted by Adnan. In the FIR it is not stated that the applicant was armed with wooden log, however, in the statement recorded after two days of the incident, Sarfaraj has attributed overtact of assaulting by wooden log to the applicant. Custodial interrogation is not necessary. Considering the aforesaid circumstances, case for anticipatory bail is made out.

5 Hence, I pass the following order:

:: ORDER ::

- (i) Anticipatory Bail Application No.2417 of 2018, is allowed;

- (ii) In the event of arrest of the applicant in connection with C.R.No.I-176 of 2018, registered with Bhoiwada Police Station, Bhiwandi, District - Thane, the applicant be released on bail on his furnishing P.R. Bond in the sum of Rs.20,000/-, with one or more sureties in the like amount;
- (iii) The applicant shall report the investigating officer of Bhoiwada Police Station, Bhiwandi, District - Thane, on 30th November, 2018, 1st and 2nd December, 2018, between 10:00 a.m. to 12:00 noon;
- (iv) Anticipatory Bail Application No.2417 of 2018, stands disposed of.

(PRAKASH D. NAIK, J.)