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

ANTICIPATORY BAIL APPLICATION NO.2464 OF 2018

Nitin Abhimanyu Dudhane & Anr.

..Applicants

Vs

The State of Maharashtra

..Respondent

Mr. P.G. Sarda, for Applicants.

Mr. Amit Palkar, APP for State.

CORAM : A.S.GADKARI, J.

DATE : 3rd December 2018.

P.C.:

1] This is an application under 438 of Cr. P.C for pre-arrest bail in CR No.410 of 2018 dated 31.10.2018 registered with Warje Malwadi Police Station, Pune under sections 326, 325, 323, 504, 506, read with 34 of the Indian Penal Code.

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

3] The first information report is lodged by Mr. Tushar Prajapati aged about 22 years, a student taking education at Pune. It is the prosecution case that, the first informant along with his two friends had

taken a flat bearing No.201 situated at Omkar Abhinav Society, Karve Nagar, Pune on rental basis from the applicant No.1 and had paid deposit of Rs.19,500/- to him. As the said flat was not in habitable condition, the first informant retained Rs.7000/- with him out of the said deposit amount. On 20.9.2018 when the first informant had been to the applicant No.1 for making balance balance payment, the applicant No.1 informed him that, he is likely to receive a deposit of Rs.22,000/- from another occupant and asked the first informant to vacate the flat. The applicant No.1 also informed the first informant that, the balance amount of Rs.8000/- will be paid to him on 5.10.2018. Till 19.10.2018, the first informant repeatedly requested applicant No.1 to pay his balance amount. On 19.10.2018, the applicant No.1 and his wife from mobile phone asked the first informant to come to their residence to collect the balance of Rs.8000/- on 20.10.2018 at about 10.00 a.m. On 20.10.2018, when the first informant had been to the house of the applicant No.1, and was waiting for applicant No.1 in the parking lot. The applicant No.1 along with applicant No.2 arrived at scene of offence and all of a sudden assaulted the first informant with the aid of "kada" on his left ear and the applicant No.2 assaulted first informant with the aid of a wooden plank on the waist and right shoulder of the first

informant. It is the prosecution case that, due to said assault, the first informant vomited at the spot and also there was bleeding from his ear. It is categorically stated that, after taking medical treatment from Sassoon Hospital, Pune, the present crime is registered.

4] The learned counsel for the applicant submitted that, the applicant No.1 was not having intention to commit any act as contemplated under section 326 of the Indian Penal Code. That there was delay of 10 days in lodging the present crime and the said delay is not properly explained. He submitted that, for investigation of the present crime, the custody of the applicants is not necessary and prayed that the applicants may be granted pre-arrest bail.

5] Perused the record of investigation. The eye-witness Pankaj has duly corroborated the version of the first informant. The medical report submitted by the Chief Medical Officer, Sassoon Hospital, Pune supports the version of the first informant. In the said report, it is stated that, the first informant suffered loss of hearing of his left ear. That there is severe mix hearing loss to the left ear of the first informant.

6] Thus prima facie it appears that the version of the first informant has been duly corroborated by the eye-witness as well medical

report. The weapons used in the present crime i.e. “Kada” and “wooden Plank” are yet to be recovered by the police and the same is not possible without there being custodial interrogation of the applicants.

7] In view of the above and after taking into consideration the allegation against the applicants which are serious in nature and the gravity of the offence and since the weapons used the crime are yet to be recovered by the police, this Court is of the opinion that the both applicants do not deserve to be protected by pre-arrest bail.

Application is accordingly rejected.

(A.S.GADKARI, J.)