

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

ANTICIPATORY BAIL APPLICATION NO.233 OF 2019

Mehtab Alam Azmatullah Khan

.. Applicant

Vs.

State of Maharashtra & Anr.

.. Respondents

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Mr.Ashok P. Mundargi, Senior Advocate i/b. Mr.Ujjwal Gandhi,
Advocate for the Applicant.

Ms.A.A. Takalkar, APP for the Respondent – State.

Mr.Chavan R.S., PI Sewree Police Station, present.

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CORAM : PRAKASH D. NAIK, J.

DATED : FEBRUARY 5, 2019.

P.C. :

This is an application for anticipatory bail in connection with C.R.No.48 of 2017, registered with MIDC Police Station, Mumbai, for the offences punishable under Sections 302, 307, 326, 342, 143, 144, 147, 148, 149, 506(II) and 120-B of Indian Penal Code ("IPC", for short).

2 The prosecution case is that on 3rd February, 2017 at about 3.20 p.m. MIDC Police Station received an information that three injured are lying at Bhangarwadi, Subhashnagar MIDC at

Andheri. One person namely Wasiulla Moshin Shaikh was injured. Thereafter, the First Information Report ("FIR", for short) was lodged at the instance of Abdul Mohasin Shaikh. The complainant narrated the alleged incident of assault to the police. It is alleged that on 3rd February, 2017, one person namely Chinka called the informant and deceased to Bhangarwadi area. It is alleged that both of them along with one person namely Shamsuddin went there. Chinka told them not to give information to the police. It is further alleged that thereafter the accused took them into a gala. There were two unknown person aged about 25 to 30 years present at the place of incident. It is alleged that the accused had gathered there to kill the complainant, deceased and Shamsuddin. The accused assaulted the complainant and others in which one of the injured succumbed to the injury. It is alleged that the accused threatened the locals not to intervene in the matter or else they will face dire consequences. The injured was taken to the gala in the injured condition. On the basis of the information given to the police, FIR came to be registered on 3rd February, 2017.

3 Learned counsel appearing for the applicant submitted that the applicant has been falsely implicated in this case. The witnesses have improvised their version in the

supplementary statement to implead the applicant. It is submitted that in the First Information Report, the name of the applicant was not reflected. Learned counsel pointed out the statement of Shamsuddin Shah, and submitted that in the initial statement no overtact has been attributed to the applicant. However, in the supplementary statement, the applicant's name has been referred to and role is also assigned to him. It is submitted that the applicant be granted bail on the ground of parity as Anwar Ali Mohd. Jalil Khan, who has similarly placed has been granted anticipatory bail by this Court vide order dated 19th April, 2017. Learned counsel for the applicant also pointed out order granting bail passed by this Court in B.A.1265 of 2017, in respect to accused Parwez Alam Khan Anwarali Khan @ Ramzan. Relying upon the observations made in both the orders, it is submitted that the applicant's involvement was disclosed belatedly and that the applicant's role is similar to the accused who are granted anticipatory bail and bail. Learned APP on the contrary submitted that there is sufficient evidence against the applicant. The applicant cannot claim parity as the role attributed to the co-accused who has been granted anticipatory bail is distinct in nature. The co-accused was arrested and subsequently granted bail. I have perused the statements recorded and the orders

referred to by the learned counsel for the applicant. On perusal of the statement of Shamsuddin Shah, it is apparent that the presence of the applicant is reflected in the statement dated 15th February, 2017, as one amongst the person who, told others to assault the victims. In the same statement it is stated that applicant and another person again came at the spot of the incident and have assaulted the victim. Learned counsel for the applicant submits that the said version has come belatedly and the statement was improvised by the witnesses.

4 The co-accused who has been granted anticipatory bail by this Court was purportedly present at the scene of the offence and have allegedly given instructions to assault. However, the present applicant is attributed the role of instigation and participating in the assault.

5 The other accused was arrested and granted regular bail. The role of the person who has been granted anticipatory bail can be distinguished. In the light of the above, no case for grant of relief, as prayed for in this application can be granted. Hence, Anticipatory Bail Application is rejected.

(PRAKASH D. NAIK, J.)