

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

ANTICIPATORY BAIL APPLICATION NO. 1817 OF 2018

1. Kalim Ali A. Shaikh
2. Kayyum Ali A Shaikh

... Applicants

Vs.

State of Maharashtra

... Respondent

CRIMINAL APPLICATION NO. 1349 OF 2018

IN

ANTICIPATORY BAIL APPLICATION NO. 1817 OF 2018

Vinod Sahu

... Intervenor

In the matter between

Kalim Ali A. Shaikh & Kayyum Ali A Shaikh

... Applicant

Vs.

State of Maharashtra

... Respondent

...

Mr. Gaurav Bhomi a/w Mr. Abdul Hafeez I/by Kam Abdul Waheb for the applicant.

Mr. Ashif Hussain for the intervenor.

Mr. A.R. Kapadnis, APP for the Respondent-State.

Mr. B.R. Garande, P.I. B.K.C Police Station is present.

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CORAM : PRAKASH D. NAIK, J.

DATE : 25th JANUARY, 2019.

P.C.

1. This is an application for anticipatory bail in CR No. 222 of 2018 registered with B.K.C. Police Station for the offence punishable under Sections 307 read with 34 and 120-B of Indian Penal Code. Applicants had preferred an application for anticipatory bail in the Court of Sessions which was rejected vide order dated 24th August, 2018.

2. First Information Report was lodged on 12th August, 2018 by Vinod Ratan Sahu stating that on 12th August, 2018 on account of previous enmity he was assaulted by Kasim Ali and Kayyum Ali by iron rod and gave blows on his head and neck. Thereafter, supplementary statement of the complainant was recorded in which he has stated that he was assaulted by Nabi Shaikh and Sultan Shaikh by iron rod.

3. Applicant was granted interim protection vide order dated 6th September, 2018. While granting interim protection it was directed that the applicants shall not enter into the area of B.K.C. Police Station till the next date of hearing. Intervenor has filed an affidavit alleging that there is breach of condition imposed by this Court while granting interim protection. He stated that applicants are involved in commission of the offence under section 324, 323 of Indian Penal Code on 16th October, 2018.

4. Learned counsel for the applicant submits that applicants are falsely implicated in this case on account of enmity. Applicants have not played any role in the crime. It is submitted that no role has been assigned to the applicant by the complainant in the supplementary statement. It is further submitted that statement of Dipendra also did not attribute any overt act to the applicant as a

person who participated in assault. Other witnesses did not refer to the involvement of the applicants as assailant. It is further submitted that FIR registered vide CR No. 285 of 2018 is false. It is submitted that applicants have not committed the breach of condition.

5. Learned APP submitted that the applicants were restrained from entering into the jurisdiction of B.K.C. Police Station. However, they were involved in the offence vide CR No. 285 of 2018 on 16th October, 2018 younger brother of the complainant was assaulted. It is further submitted that applicants are conspirators in the crime and on account of enmity the complainant was assaulted. He further submitted that there are eye witnesses who has referred to the involvement of the applicants in participating in offence registered vide CR No. 285 of 2018 which indicates breach of condition. He further submitted that CDR records also shows the presence of the applicant in the area of B.K.C. Police Station during the operation of the interim protection granted by this Court.

6. Learned counsel for the applicants submits that applicants were permitted to enter the jurisdiction of police station for the purpose of attending the police station. Learned counsel for the

applicants also submitted that the persons who were attributed the role of assaulting the younger brother of complainant were arrested and they were granted bail.

7. The case of the prosecution is that applicants are involved in the crime. It is pertinent to note that applicants were granted interim protection vide order dated 6th September, 2018. Investigation reveals the involvement of the applicants in the said crime. FIR was registered against the applicants on 16th October, 2018 and there are eye witnesses to the said incident. According to prosecution on several occasions, the applications were available in the area of B.K.C. Police station in breach of condition imposed by this Court. Co-accused were granted bail, after their arrest. Affidavit relied upon by the learned counsel for the applicant cannot be considered at this stage. In the light of aforesaid circumstances, no case for grant of anticipatory bail is made out. Hence, Anticipatory Bail Application No. 1817 of 2018 is rejected and interim order dated 6th September, 2018 granted by this Court stands vacated. Criminal Application No. 1349 of 2018 stands disposed off.

(PRAKASH D. NAIK, J.)