

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

ANTICIPATORY BAIL APPLICATION NO.2133 OF 2018

Shivaji Eknath Fokane Applicant

versus

The State of Maharashtra Respondent

WITH

ANTICIPATORY BAIL APPLICATION NO.2134 OF 2018

Ravindra Shivaji Fokane Applicant

versus

The State of Maharashtra Respondent

.....

- Mr.S.S. Kulkarni i/b. Devidas Jyotiram Jadhav, Advocate for Applicant.
- Ms.S.S. Kaushik, APP for the State/Respondent.

**CORAM : SARANG V. KOTWAL, J.
DATE : 19th JUNE, 2019**

P.C. :

1. The Applicants are seeking anticipatory bail in connection with C.R.No.135/18 registered with Wadivarhe Police Station, Nashik, under sections 326, 323, 341, 504, 506 r/w 34 of the Indian Penal Code.

2. The FIR is lodged by one Kailash Bahiru Fokane. According to him on 06/08/2018 at 08.00 p.m. when he was travelling on his motorcycle on the road near agricultural land of one Shivaji Raju Fokane, two motorcycles intercepted him and four persons riding on those motorcycles assaulted the first informant. One Sanjay Dinkar Khatale assaulted him with iron rod and others assaulted with wooden sticks. One of them while going away, stated that the first informant should not cause trouble to "Shivaji Fofane". After some time some villagers came there and removed the first informant to hospital.
3. Heard learned Counsel Mr.S.S. Kulkarni for the Applicant and learned APP Ms.S.S. Kaushik for the State.
4. Learned APP pointed out that the first informant had suffered four injuries out of which one was a fracture to his left leg. Therefore the offence under sections 326 and 307 of IPC is made out.

5. On the other hand, Mr. Kulkarni submitted that there is no role ascribed to the present Applicant. They were not present on the spot when the incident took place. They are sought to be arraigned as accused because of the assailants mentioned the name of one Shivaji Fokane and that the assault was caused at his instance.

6. The FIR itself shows that the first informant was travelling from near an agricultural land of “Shivaji Raju Fokane”. The Applicant's name in ABA No.2133/18 is “Shivaji Eknath Fokane”. Thus there are two persons of the similar names. The learned Counsel therefore submitted that there was a possibility that it is a case of mistaken identity as the Applicant in ABA No.2133/18 has absolutely nothing to do with the incident. Applicant Ravindra Shivaji Fokane in ABA No.2134/18 is son of the Applicant in ABA No.2133/18. Even against him there is no material.

7. Learned APP submits that the investigation is almost completed and the charge-sheet is about to be filed. The learned APP could not point out any material connecting both these Applicants with the offence. With the assistance of the Investigating Officer, the learned APP concedes that at this stage there is no material against both these Applicants. Therefore they deserve protection of anticipatory bail. Hence, the following order :

ORDER

- (i) In the event of their arrest in connection with C.R.No.135/18 registered with Wadivarhe Police Station, Nashik, the Applicants are directed to be released on bail on their furnishing PR bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) each, with one or two sureties each, in the like amount.
- (ii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)