

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

ANTICIPATORY BAIL APPLICATION NO. 1253 OF 2021

Mohammad Azam Sher Md. Khan Applicant

Versus

The State of Maharashtra Respondent

Mr. Ghanshyam Upadhyay i/b. Law Juris for Applicant.
Ms. Rutuja Ambekar, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 21st MAY, 2021
(Vacation Court)
(Through Video Conferencing)

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No. 118 of 2021 registered at Kandivli Police Station, Mumbai, under sections 353, 332, 324, 323, 504 and 506 r/w. 34 of the Indian Penal Code (for short 'IPC').
2. Heard Shri. Ghanshyam Upadhyay, learned counsel for the applicant and Ms. Rutuja Ambekar, learned APP for the State.
3. The First Information Report (for short 'F.I.R.') is

lodged by police constable Ravindra Bhosale. He has stated in the F.I.R. that, he was attached to Crime Detection Branch. On 26/02/2021, at about 9:30p.m. his team received a secret information that an accused named Fatte Mohammad Sher Mohammad Khan @ Aman, involved in C.R.No.84 of 2021 registered at Kandivli police station was present in a marriage ceremony at Kandivli. The informant's team went to the spot in plain clothes. They saw that aforementioned Aman and his brother i.e. present applicant were dancing in the ceremony. As soon as, Aman saw the police party, he tried to run away from the spot. The informant caught hold of Aman. At that time, Aman started shouting. It is alleged that the applicant came there for his rescue. At that time, police constable Sakpal held him. Aman's mother and sister came aggressively towards police. They started abusing. Aman's mother Wasima hit the informant with stone on his right hand. Because of that Aman could escape and run away. In the meantime, the applicant rescued himself from the grip of police constable Sakpal. He pushed him and went away. On this basis the F.I.R. was lodged.

4. Learned counsel for the applicant submitted that, other accused i.e. mother and sister of the applicant were arrested and were released on bail. Other main accused Aman had escaped. The applicant himself is a young boy of 18 years of age. He has not played any major part in the entire episode and his act would not fall within the meaning of section 353 of IPC.

5. Learned APP opposed this application. She submitted that the applicant was very much present there and he had taken part in the incident. Therefore, anticipatory bail should not be granted to him.

6. I have considered these submissions. From the F.I.R. it is clear that the police party had gone there to arrest the applicant's brother Aman. The informant had, in fact, caught hold of Aman but he could escape only because of his mother as she given a blow of stone on the informant's hand. For this act, the present applicant cannot be held responsible. He was present there and he reacted in a manner which was not unusual. The applicant himself had not done anything aggressively. In fact, he was held by police constable Sakpal. He only rescued himself. Therefore, it is

difficult to observe that he had done anything intentionally which would fall within the meaning of section 353 of IPC. However, this fact will have to be tested during trial. Considering the young age of the present applicant and very minor role played by him in the entire episode, custodial interrogation of the applicant is not necessary. He can be protected by an order of anticipatory bail.

7. Hence, the following order :

ORDER

- (i) In the event of his arrest in connection with C.R.No. 118 of 2021 registered at Kandivli Police Station, Mumbai, the applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- (ii) The Applicant shall attend the concerned Police Station, as and when called, and shall cooperate with the investigation.
- (iii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)