

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

ANTICIPATORY BAIL APPLICATION NO.1312 OF 2021

Kishan Jiva Ghavri

.... Applicant

versus

State of Maharashtra

.... Respondent

.....

- Mr.Ashok Mundargi, Senior Advocate i/b. Mr.Vinayak Patil, Advocate for Applicant.
- Mr.A. A. Palkar, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 07th JULY, 2021

(Through video conferencing)

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.49/2021 registered with Manpada Police Station on 28/01/2021. Initially offence was registered under sections 324, 323, 504, 506 of the Indian Penal Code. However, subsequently section 326 of the India Penal Code was added. The Applicant was arrested and granted bail at the first instance, because only section 324 was applied. After that, police made an application before the Magistrate for cancellation of that bail and therefore

the Applicant has reasonable apprehension of being arrested in connection with this crime.

2. The FIR was lodged by the first informant Yashwant Bhola Chavan on 28/01/2021. He has stated that at about 11.30 p.m. he was going towards his house on his motorcycle. He was stopped by two unknown persons, who had come on another motorcycle. They assaulted the informant with wooden stick on his stomach and back. Those unknown persons had covered their faces with handkerchief. The informant then went to hospital for treatment and after that he lodged his FIR. It is mentioned in the FIR that the Applicant had taken Rs.5 lakhs from the informant for giving job to the informant. The Applicant had not done any work in that behalf and had not returned the money. Therefore there used to frequent quarrels between the informant and the Applicant. The informant had made a complaint with Commissioner of KDMC against the Applicant. The informant's case is that because of this history he suspected that the Applicant was behind this assault and on this

suspicion the informant mentioned the Applicant's name in the FIR.

3. Heard Mr.Ashok Mundargi, learned senior counsel for the Applicant and Mr.A. A. Palkar, learned APP for the State.
4. Learned Senior Counsel for Applicant submitted that this suspicion has no basis at all. Beyond this vague suspicion there is absolutely no material against the present Applicant justifying his custody.
5. Learned APP produced medical certificate before me.
6. I have perused that certificate, which shows that the informant had suffered fracture at one place on his spine. It was described as a grievous injury. At this stage, the informant's case as far as assault is concerned, appears to be true. However, the unknown persons had covered their faces and the police have not been able to trace their identity. The Applicant has attended

the police station and has cooperated with the investigation. He has provided all the necessary details of his phone number and other essential information. In this view of the matter, the prosecution case does not travel beyond suspicion. It is very difficult to establish identity of the assailants, because they had covered their faces and there are no eyewitnesses. Therefore, even the informant is not in a position to state who were the actual assailants. Admittedly, the Applicant was not amongst the assailants, because the informant had heard their voice and it is his case that he only suspected the Applicant as the person behind this assault. Thus, investigating agency does not have any basis for arresting the present Applicant. His arrest will not be justified in these circumstances. The Applicant has attended the police station and has cooperated with the investigation. In this view of the matter, the Applicant 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.49/2021 registered with Manpada Police Station, 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.)