

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

ANTICIPATORY BAIL APPLICATION NO. 2277 OF 2021

Shabber Karam Husein ... Applicant

Versus

The State of Maharashtra ... Respondent

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Mr. Shyamrishi Pathak a/w Mr. Mahant Patange, Advocate for the Applicant.

Mr. S. R. Agarkar, APP for the Respondent – State.

Mr. Manoj S. Shinde, (I.O.) Vakola Police Station, Present.

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CORAM : PRAKASH D. NAIK, J.

DATE : 28th SEPTEMBER, 2021

PER COURT:

1. This is an application for anticipatory bail in C.R. No. 415 of 2020 registered with Vakola Police Station, Mumbai for offences under Sections 307 & 504 r/w Section 34 of Indian Penal Code (for short “IPC”).

2. The First Information Report (for short ‘FIR’) was lodged on 2nd November, 2020 by Vishal Jadhav who is working as Senior Account Executive in the company. On 2nd November, 2020, the injured had gone to the bank for depositing cheque and cash.

The complainant received call from Sanjay Kudtarkar that

unknown persons have assaulted him causing injury to his person. The complainant immediately visited hospital where in the injured was taken for treatment. On inquiry with him the injured disclosed that while he was walking towards Bank on footpath, two unknown person came from behind and assaulted him by knife. He was taken to another hospital for treatment.

3. Two persons namely Khurshid Ahmed Rais Ahmed Ansari and Abutalib Mukir Ahmed Khan were arrested on 4th March, 2021. They were produced before the Court for remand. Remand application dated 8th March, 2021 mentions that while the arrested accused were in custody inquiry was made with them about the person named Salman and the accused disclosed that the real name of Salman is Shabbir. The arrested accused were subsequently granted bail.

4. The applicant preferred an application for anticipatory bail before the Court of Sessions which has been rejected vide order dated 23rd June, 2021.

5. The statement of injured Sanjay Kudtarkar was recorded on 6th November, 2020. He stated that three persons were involved in the assault. He was assaulted with weapon like knife. He was admitted in the hospital for treatment. According to

prosecution, third person referred to by the same person is applicant. The memorandum statement under Section 27 of the co-accused was recorded.

6. Learned Advocate for the applicant submitted that the applicant has been falsely implicated in this case. The tenor of the remand application dated 8th March, 2021 indicate that the police were already aware about the name of Salman and clarification of the applicant about the name of Salman which was clarified to be person named Shabbir. This shows applicant is falsely implicated. Identification parade was not conducted for accused, who were in custody.

7. According to learned APP, on account of pandemic situation it was not possible to hold identification parade. Complicity of the applicant is disclosed by the co-accused. The applicant is the person, who was involved in assaulting the injured with knife. The complainant had sustained serious injury. Applicant is involved in more case.

8. The injured is the employee of the Company of complainant. He was regularly visiting the bank for depositing the amount or cheque of the company. He was assaulted by unknown persons. The motive for assault is not known because there is no

incident of robbery and hence the reason for assaulting is mystery. The complainant has stated that after learning about the incident he visited the hospital where the injured was hospitalized and made inquiry with him. The injured told him that two persons were involved in the assault. There was no reference to the persons involvement. Two persons were arrested immediately. There is no identification of the arrested accused. After the arrest of the co-accused, the statement of the injured was recorded. On 6th November, 2020 reference of three persons is made which is defers from the version of the complainant. On analyzing the factual aspects as stated above, I find that the custodial interrogation of the applicant is not warranted. Case for grant of anticipatory bail is made out.

9. Hence, I pass the following order:

ORDER

- (i) Anticipatory Bail Application No. 2277 of 2021 is allowed;
- (ii) In the event of arrest of the applicant in connection with C.R. No. 415 of 2020 registered with Vakola Police Station, Mumbai, the applicant be released on bail on furnishing P. R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount;

(iii) The applicant shall attend the investigating officer on 5th, 6th & 7th October, 2021 between 11.00 a.m. to 1.00 noon and thereafter as and when called for till filing of charge-sheet.

(iv) Anticipatory Bail Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)