

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

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 2006 OF 2019

Aslam Akram Shaikh

... Applicant

V/s.

The State of Maharashtra & Anr.

... Respondents

Mr. Satish R. Mishra for Applicant.

Mr. Y. M. Nakhawa, A.P.P. for Respondent-State.

CORAM : A.S. GADKARI, J.

DATE : 4th September 2021.

PC. :

1. Heard Mr. Mishra, learned counsel for the Applicant and Mr. Nakhawa, learned APP for the State. Perused chargesheet.

2. The record indicates that, by an Order dated 18th September 2019, the Applicant was granted interim relief and was directed to attend the Investigating Officer of the concerned Police Station on stipulated dates and thereafter as and when called.

3. First Information Report dated 26th August 2019, is lodged by Mr.Kadar S. Shaikh. The prosecution case in brief is that, in the intervening night of 25th August 2019 and 26th August 2019 at about 2.30 a.m., the Applicant alongwith co-accused Mr.Nadeem and Mr.Manoj came infront of the house of informant, knocked his door and called him outside. At that time,

wife of the Applicant opened the door. The said three persons showed her one plastic can and chappal and asked her, whether the same belongs to her. The wife of Applicant answered in negative and thereafter, the said three persons left the said spot. It is alleged that, on 25th August 2019 at about 10.30 a.m., the informant left for his duty and returned at about 6.00 p.m. That time the Applicant alongwith co-accused Mr.Nadeem and Mr.Manoj came infront of his house and questioned him as to why the informant was peeping inside the house of Mr.Manoj in the midnight. The informant denied the said question and thereafter, the said three persons abused the informant. It is alleged that, co-accused Mr.Nadeem held hands of informant from behind and the Applicant and other accused Mr.Manoj assaulted with fists on the face of informant. It is also alleged that, the Applicant took bamboo stick, which was lying at the scene of offence and gave a blow on the right shoulder of the informant. The family members of informant tried to rescue the said fight and at that time the accused persons pushed wife of informant. People from the locality thereafter pacified the said fight. In this brief premise, the present crime is registered.

4. The record indicates that, the wife of Mr.Manoj Singh i.e. Smt. Kusum M. Singh has also lodged a crime bearing No.507 of 2019, under Sections 354C, 323, 504 of the Indian Penal Code against the informant Mr.Kadar Shaikh. She has alleged that, in the intervening night of 25th August

2019 and 26th August 2019 at about 2.00 a.m., she realized that, somebody was peeping inside their house through the window, when she and her husband were having intimate relations. When Mr.Manoj Singh switched on the light and opened door, he saw the informant in the present crime i.e. Mr.Kadar Shaikh running from the said place. Mr.Manoj Singh also noticed that, the informant herein i.e. Mr.Kadar Shaikh had brought one plastic dustbin near the window to stand thereon. That, Mr.Manoj Singh thereafter called the present Applicant and Mr.Nadeem and thereafter, they went to the house of Mr.Kadar Shaikh (informant herein) and questioned him about his conduct.

5. In this background, it appears that, on 25th August 2019, when Mr.Kadar Shaikh came to his house, the Applicant alongwith Mr.Nadeem and Mr.Manoj had been to his house and questioned him about his act of peeping inside the house of Mr.Manoj Singh in the intervening night of 25th August 2019 and 26th August 2019. A scuffle took place there and it appears that during the said scuffle, the Applicant had a fall and sustained injury to his right shoulder. The Medical Certificates issued by Brihanmumbai Mahanagar Palika V. C. Gandhi & M. A. Vora Municipal General Hospital, Rajawadi, Ghatkopar (E), Mumbai, indicates that, the informant herein has suffered a right midshaft clavicle fracture due to blunt weapon. As noted earlier, the informant might have sustained the said injury due to a fall during the said

scuffle. The defence of the informant that, he was not at the place of Mr. Manoj Singh in the midnight of 25th August 2019, has been belied by the F.I.R. lodged by wife of Mr. Manoj Singh. Her statement appears to be more reliable and trustworthy than the statement of informant Mr. Kadar S. Shaikh. The weapon viz. Bamboo Stick allegedly used by Applicant has been recovered from the scene of offence itself and the custodial interrogation of the Applicant for recovery of the same is not necessary. The Police are seeking custody of the Applicant for recovery of the said weapon. The record further indicates that, after completion of investigation, Police have submitted chargesheet.

6. In view of the above, the Applicant is entitled to be protected by pre-arrest bail. Interim relief granted by Order dated 18th September 2019 is hereby confirmed. However, the condition to attend the Investigating Officer of the concerned Police Station is waived.

7. Application is allowed in the aforesaid terms.

[A.S. GADKARI, J.]