

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.1310 OF 2022**

Atirek Rajkumar Sharma ... Applicant
versus
The State of Maharashtra ... Respondent

WITH
INTERIM APPLICATION NO.1544 OF 2022

Mr. Akhilesh Chaubey with Ms. Hemangi Kuber i/by AVC and Associates, for Applicant.
Mr. Ajay Patil, APP, for State.
Mr. Rupesh Lanjekar i/by Mr. Kaushik Mhatre, for Intervener.

CORAM: N.J.JAMADAR, J.

**DATE : 13th MAY, 2022
(VACATION COURT)**

P.C.

1. This is an application for pre-arrest bail in connection with C.R.No.331 of 2022 registered with Goregaon Police Station, Mumbai, for the offences punishable under Sections 323, 324, 326, 329, 344, 387, 394, 504 and 506 read with Section 34 of the Indian Penal Code (the Penal Code).

2. The indictment against the Applicant is that Mr. Rajiv Gopaldas Gandhi (the first informant) had known the Applicant. The first informant was engaged in the business of trading in shares. The Applicant had invested some amount in stocks through the first informant. Initially, there was a profit and the first informant paid

substantial amount to the Applicant. Later on, there was a loss in the share trading. The Applicant started to threaten the first informant with dire consequences, if his demand for return on investment was not met.

3. On 11th January, 2022, the Applicant allegedly took the first informant to his house i.e. Flat No.3103, C Wing, Imperial Heights, Goregaon (W), Mumbai. The Associates of the Applicant, including his driver and bouncer, and the Applicant as well, assaulted the first informant in the presence of Mr. Ajit, a common friend. The first informant sustained multiple injuries, including the bleeding injuries on head and hand. At the intervention of Mr. Ajit, the Applicant took the first informant to Ashish Hospital, Mira Road, on the condition that he would not disclose true facts. The first informant was treated as an indoor patient upto 15th January, 2022. After discharge from the said hospital, the Applicant again kept the first informant in confinement till 10th March, 2022. During the said period, the first informant was coerced to pay a sum of Rs.40,000/- to the Applicant. The first informant was also made to inform his family members that he was out of station in connection with some business commitments. After release, the first informant claimed to have mustered courage and lodged report on 6th April, 2022.

4. Apprehending arrest, the Applicant preferred an Application for pre-parrest bail before the Court of Session. The learned Additional Sessions Judge was persuaded to reject the Application holding, *inter alia*, that there was adequate material which warrants the custodial interrogation of the Applicant and the delay in lodging the report, in the circumstances of the case, was not a ground to exercise the discretion in favour of the Applicant. The Applicant has, thus, preferred this Application.

5. I have heard Mr. Chaubey, the learned Counsel for the Applicant and Mr. Patil, APP for the State.

6. Mr. Chaubey, learned Counsel for the Applicant, strenuously submitted that not only the prosecution suffers from the vice of inordinate delay, but also from malafide, as the first informant lodged a report only after being served with the demand notice issued under Section 138 of the Negotiable Instruments Act, 1881 consequent to dishonour of the cheque drawn by the first informant in discharge of the legally enforceable debt or liability. Mr. Chaubey further submitted that had the first informant been wrongfully confined from 11th January, 2022 to 10th March, 2022 in the house of the Applicant, the said fact could have been easily brought on record by placing the CCTV footage. It does not appeal

to human credulity, according to the learned Counsel for the Applicant, that the first informant could have been detained for such a long period in the house of the Applicant, without any resistance or action on the part of the first informant and his relatives.

7. Mr. Patil, learned APP, on the other hand, submitted that in the first information report itself, the Applicant has given satisfactory explanation for the delay. Secondly, the fact that the Applicant was admitted in Ashish Hospital, Mira Road, from 12th January, 2022 to 15th January, 2022 is substantiated by the injury certificate / medical records. Moreover, there is material in the form of the photographs, which clearly show the Applicant assaulting the first informant by means of stick and the first informant in an injured condition. Having regard to the antecedents of the Applicant, according to the learned APP, the Applicant does not deserve the discretionary relief of pre-arrest bail.

8. I have carefully considered the submissions canvassed across the bar. The delay in lodging the FIR, at the first blush, puts the court on guard. The fact that there were transactions between the parties, as is borne out by the allegations in the FIR and the notice issued under Section 138 of the Act by the Applicant to the first informant, warrants a cautious view. However, on a deeper

scrutiny, these factors, *prima facie*, appear to pale in significance.

9. The claim of the first informant that he was admitted in Ashish Hospital, Mira Road, from 12th January, 2022 to 15th January, 2022, finds requisite support in the case records maintained by the said hospital. Undoubtedly, the history of road traffic accident was given. However, it is pertinent to note that during the course of examination, the medical officer found head injury, CLW, and multiple trauma on whole body. At this stage, the first informant's claim that he was made to give an incorrect history of the injuries, if he was to have treatment, finds support in the statement of Mr. Ajit. The said witness has stated about the manner in which the Applicant and his associates assaulted the first informant. The photographs placed on record, *prima facie*, indicate the manner in which the first informant was assaulted by the Applicant, including the fact that the first informant had sustained bleeding injuries. A pen drive containing the video recording, which was referred to by Mr. Ajit in his statement before police, came to be seized under the panchanama dated 18th April, 2022. The allegations of assault and confinement contained in the FIR, find support in the statement of Mr. Ajit, the alleged eye-witness, and photographs/video record.

10. In view of the aforesaid material which, *prima facie*,

reveals the involvement of the Applicant in the offences, the aspect of delay in lodging the FIR, may not assume decisive significance. The fact that identical allegations are made against the Applicant in C.R.No.336 of 2022, also cannot be lost sight of.

11. In the circumstances, the Applicant does not deserve exercise of discretion. Hence, the order :

ORDER

(i) The Application stands rejected.

(ii) In view of the rejection of the Application, the Interim Application No.1544 of 2022 seeking intervention, does not survive and the same is accordingly disposed.

(N.J.JAMADAR, J.)