

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 2545 OF 2022

Mohammed Abbas Shaikh @ Mohd. Lefti .. Applicant

Versus

The State of Maharashtra .. Respondent

Mr. Gurav Bhawnani i/b Mr. Zeeshan Khan for the Applicant.

Mr. Ashish Dubey for Intervenor.

Ms. Veera Shinde , A.P.P. for the State/Respondent.

Mr. Vijay Mane, P.I, Dharavi, Police Station.

CORAM: BHARATI DANGRE, J.

DATED : 27th SEPTEMBER, 2022

P.C:-

1. The applicant face accusations in C.R. No. 884 of 2021 which has invoked offences under sections 307, 326, 324, 452, 427, 380, 143, 144, 146, 147, 148, 149, 506 (2), 120 (b), 109 of IPC, along with Section 4, 25 of the Arms Act and Section 37(1) (A), 135 of the Maharashtra Police Act.
2. On completion of investigation, charge-sheet has been filed against 7 accused persons, and 5 persons including the applicant are shown absconding.

With the assistance of the learned counsel for the applicant,

counsel for the complainant and the learned APP, I have perused the material compiled in the charge-sheet.

3. The subject CR is filed on the complaint lodged by one Kaljeet Barun, who has alleged that on 2/10/2021, while he entered into the office in Kalyanwadi Dharavi, where his brother along with his assistant was present, suddenly three persons barged inside and one person armed with sword assaulted his brother and it is alleged that, this was to revenge the discord with one Gattu Bhai. When the complainant intervened, it is alleged that the two persons along with the sword and rod in their hands attempted to hit him and it is alleged that this was happening, two associates of the assailants entered inside and it is alleged that he sustained injuries in the incident, which was an attempt to cause his death.

The aforesaid incident is corroborated by version of the complainant's brother. Admittedly it is not the case of the prosecution that applicant was one of the assailant.

4. The role which the prosecution attribute to the applicant is of purchasing an iron rod. And when specifically asked whether this is the same rod which is used by the assailant, while assaulting the injured, the learned APP state that it cannot be said with certainty, as

there is no material to that effect compiled in the charge-sheet.

5. The injury certificate of Kaljeet reflect two CLWs, the first being located on right parietal region of head, and the second on shin of right leg. In any case these are not the injuries, which are attributed to the present applicant.

6. The learned APP has relied upon a CCTV footage of a shop, from where the two iron pipes were purchased and the panchnama dated 3/12/2021 record the presence of the applicant along with one Mohd. Faiz and Iram Baihera in the shop when one Sher Ali Khan had displayed the iron rods and it is alleged that Mohd. Faiz, was one of the persons, who was measuring the rod. Imran Baihera paid the amount and as far as the applicant is concerned, his presence is recorded and he is identified in the footage by Dharmendra Varun, the brother of the informant.

Assuming that the panchnama is there but the audio recording which is also referred in the panchnama, when the visitors in the shop ask for 4 pieces of 4 inches, without specifying, whether it is a rod, pipe, it cannot be ascertained. Further when specifically asked whether the video recording also comprise of the audio recording, the learned APP answer in the negative. It is therefore not understood

on what basis the conversation is recorded in the said panchnama. In any case the co-accused Mohd. Faiz, who is alleged to be present along with the applicant is protected by an interim order, when he filed an application under section 438 of Cr.P.C, by an order dated 24/06/2022.

Considering the fact that the investigation is now complete and the charge-sheet has been filed against the other accused persons and considering the limited role attributed to the present applicant, I do not deem it fit to grant his custody for the purposes of investigation merely because the applicant has antecedents, considering the role attributed to him in the present C.R and there is no ground to have custodial interrogation.

7. Hence the following order.

: ORDER :

(a) Application is allowed.

(b) In the event of arrest, applicant Mohammed Abbas Shaikh @ Mohd. Lefti in connection with C.R.No. 884 of 2021 registered with Dharavi Police Station, shall be released on bail on furnishing P.R. Bond to the extent of Rs.25,000/- with one or two sureties in the like amount.

(c) The applicant shall report to the concerned police station between 3/10/2022 to 5/10/2022 at 3:00 p.m and thereafter as and when called for.

(d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer and shall not tamper with evidence.

(SMT. BHARATI DANGRE, J.)