

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

ANTICIPATORY BAIL APPLICATION NO.993 OF 2023

Kunal Kamlesh Sheth ...Applicant

Versus

The State of Maharashtra ...Respondent

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Ms Sana Races Khan with Mr. Parshva Bhankaria and Mr. Aditya Parmar for the Applicant.

Mr. Shrikant Yadav, APP for Respondent -State.

Mr. Gaurav Parkar with Mr. Mihir Sharma i/b. M/s. Lawgic and Advocate Ms Nikita Kaur for the Intervenor.

Mr. S.L. Bhosale, Khar Police Station, present.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 5th APRIL, 2023.

P. C. :-

1. This is an application under Section 438 of the Cr.PC. filed by the aforesaid Applicant apprehending his arrest in Crime No.260 of 2023 registered with Khar Police Station, Mumbai, for the offences punishable under Sections 323, 326 and 504 of the IPC.

2. Learned counsel for the Applicant states that there is delay of one day in lodging the complaint. She states that the incident had

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occurred at the spur of the moment and that the Applicant is not involved in committing the said crime. She further states that the

certificate obtained by the complainant is from a private hospital.

3. Per contra, learned APP states that the assault was on vital part of the body and the injured has sustained fracture of the parietal bone. He states that the gravity of the offence would not justify pre-arrest bail

4. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

5. The aforesaid crime was registered pursuant to the FIR lodged by the First Informant-Hitesh Serai. The facts narrated in the FIR reveal that on 23/03/2023 the first informant had gone to Binge hotel alongwith his friends-Vishal Jangam and Anil. He has stated that the Applicant, who was also in the said hotel came towards him and questioned as to why he was defaming him. The First Informant has alleged that despite telling the Applicant that he had not said anything bad about him or having harmed his reputation, the Applicant abused and slapped him. The Applicant thereafter picked up a glass bottle and inflicted a blow on his head. As a result, he sustained bleeding injury. He was immediately shifted to Holy Family Hospital for

treatment.

6. The medical report prima facie reveals that there was linear undisplaced fracture of the left parietal bone, which extended into the temporal bone. There was also subcutaneous haematoma and air foci seen in the left high parietal region. This injury was caused by inflicting a blow of a bottle, which may not be a 'dangerous weapon' as specified in Section 326 of the IPC. Nevertheless, the nature of the injuries sustained by the victim is an indication of the force used by the Applicant while inflicting a blow of the bottle on the vital part of the body. Considering the fact that the Applicant had caused grievous injury on the vital part of the body which would prima facie constitute offence under Section 325 of the IPC, I am not inclined to exercise discretion under Section 438 of the Cr.P.C. in favour of the Applicant. Hence, the bail application is dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)