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

ANTICIPATORY BAIL APPLICATION NO. 1124 OF 2023

Mosieen Mohd. Shafi Shaikh
Age : 30 Years, Occupation : Business,
Indian Inhabitant,
Residing at : Room No.214, R-3,
Samta Co-op HSG Society,
Opp. BMC Ward Office, P South,
Mitha Nagar, Goregaon West,
Mumbai.

...Applicant

vs.

The State of Maharashtra
[Through Sr. Police Inspector :
Tulinj Police Station]

...Respondent

Ms.Kusum Pandey a/w Ms.Pragati Mishra – Advocate for Applicant.
Mr.H.J.Dedhia – APP for the Respondent-State.
Mr.Amit Awhale – API – Tulinj Police Station.

CORAM : S. M. MODAK, J.

DATE : 2nd MAY, 2023

P. C. :-

1. Heard learned Advocate for the Applicant and learned APP for the Respondent-State.
2. An offence is registered under Sections 353, 332, 427, 504 read with 34 of Indian Penal Code, 1860 ["IPC"] against in all 4

persons. However, their full names are not given. Out of them, Accused Nos. 2 and 3 were arrested and they have been granted bail by Court of Additional Sessions Judge – Vasai. The present Applicant is Accused No.1.

3. The allegation is that the present Applicant along with other persons have obstructed the First-Informant police personnel in performing his duty and all of them went to the extent of assaulting them and even went to the extent of causing damage to the monitor and key-board at Police Station – Tulinj. His Anticipatory Bail Application was rejected by the trial Court.

4. Number of contentions are raised in order to justify the prayer for grant of anticipatory bail. Even it is submitted that the Applicant is ready to express an apology and this was considered in number of matters. Learned APP submitted that this is not a case of accepting the apology but the custodial interrogation is required considering the allegations and the manner of commission of an offence.

5. It is true that the offences are not punishable with imprisonment for more than seven years. As such, the provisions of Section 41-A of the Code of Criminal Procedure, 1973 [“Cr.PC.”] are applicable. After taking instructions, learned APP submitted that

notice under Section 41-A of Cr.P.C., is not given. Issuance of such notice is mandatory as per this provision and it is also reiterated by Hon'ble Supreme Court in case of *Arnesh Kumar V/s. State of Bihar and Another*¹. So, let the Police first to comply with the provisions of Section 41-A of Cr.P.C.

6. The Application is disposed of with above said observations. The Applicant is at liberty to move the Court asking for similar relief, if facts and circumstances justify.

7. Learned APP after taking instructions submitted that they will issue notice within 3 days from today. Till that time, let no coercive steps be taken against the Applicant. It is also confirmed that the address mentioned in the Application is the correct address.

8. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]

¹ 2014 (8) SCC 273