

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

ANTICIPATORY BAIL APPLICATION NO.303 OF 2024

Mehboob Ahamad Shekh Applicant

versus

The State of Maharashtra Respondent

.....

- Mr. Kunal Jha, Advocate for Applicant.
- Ms. Mahalakshmi Ganapathy, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 02nd FEBRUARY, 2024

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.386/2023, dated 06/06/2023, registered with Samata Nagar Police Station, Mumbai, under sections 143, 144, 147, 148, 149, 326, 341, 323, 504, 506 of the Indian Penal Code.

2. Heard Mr. Kunal Jha, learned counsel for the Applicant and Ms. Mahalakshmi Ganapathy, learned APP for the State.

3. The FIR is lodged by one Bhavesh Kaliya. He has stated that he had made some complaint against one Rahul Tangdi for encroaching on BMC Home Ground at Kandivali (E). Therefore said Rahul and his associates were angry with him. On 06/06/2023 at 07.15 a.m. the informant and his friends Nitesh and Nilesh were going for a walk. They had reached near Jain Derasar. Suddenly somebody hit him on his leg. He fell down. He saw that one unknown person was holding a bat and he was abusing him. The said person gave a blow with the bat on his other leg. The other associates of that person instigated him to hit on the head. When that person with the bat tried to give a blow on the head with his bat, the informant tried to save himself with his left hand and therefore the blow landed on his left hand finger. He was further assaulted with kicks. It is alleged that the others who were accompanying the main accused, prevented other people from saving the informant. After some time they went away. On this basis, the FIR is lodged.

4. Learned counsel for the Applicant submitted that he is

not named in the FIR. The main allegations as per the prosecution are against one Deepak. He had given blow to the informant. The Applicant has not taken part in the incident at all.

5. Learned APP produced investigation papers before me, which contain medical certificate and statements of eyewitnesses. The medical certificate shows that there was one injury in the nature of fracture on left hand little finger.
6. I have considered these submission. There are statements of eyewitnesses; namely Nitesh, Nilesh, Ashok Kumar and Savita. Eyewitnesses Nitesh and Nilesh have specifically attributed a specific role to the person with bat i.e. to the main accused Deepak. There are absolutely no roles attributed to anybody else. The only reference to the others is that after the incident, Deepak went away with them on their motorcycle.
7. Ashok Kumar has stated that when the Applicant was assaulting the informant and others went to help him, at that

time, the main accused and other associates went away. Therefore, he has also not stated that anybody else from the accused's group tried to prevent them from helping the informant. Only Savita has made a reference that the unknown persons were stopping others from coming forward.

8. Taking overall view of the matter, it is quite clear that the only role is attributed to the main accused who turned out to be Deepak, though he is not named in the FIR. There are absolutely no roles attributed to the other accused. Therefore, the Applicant's custodial interrogation in this background is not necessary. He can be protected u/s 438 of Cr.P.C.

9. Hence, the following order :

ORDER

- (i) In the event of his arrest in connection with C.R.No.386/2023, dated 06/06/2023, registered with Samata Nagar Police Station, Mumbai, the

Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.

- (ii) The application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)