

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

ANTICIPATORY BAIL APPLICATION NO. 557 OF 2024

Ankit S/o. Surendra Kumar Vyas

..Applicant

Versus

The State of Maharashtra

..Respondent

Mr. Anand Mishra i/b. Ashok M. Saraogi for Applicant.

Mr. Avinash A. Naik, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 5 MARCH 2024

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No. 842 of 2023 registered at Borivali Police Station, Mumbai, on 30.12.2023, under sections 323, 324, 504 r/w. 34 of the Indian Penal Code.

2. Heard Mr. Anand Mishra, learned counsel for the applicant and Mr. Avinash Naik, learned APP for the State.

3. The F.I.R. is lodged by one Dilesh Damani. He has stated that, he was the owner of a commercial block admeasuring 4100 Sq.ft. at Borivali (West). He had given it on rent to one Manoj Vyas in April 2023 for five years. The rent was fixed at Rs.9

lakhs per months. Manoj Vyas had started a restaurant in that commercial block. Initially, he had given the rent, but subsequently, avoided making payment. From June to November 2023 the cheques which he had given were dishonoured. He did not pay the light bill, gas bill etc. He did not make payment for license fees to sell liquor. Therefore, on 29.12.2023, at about 1.30p.m. the informant went to that place to question Manoj regarding non payment of these dues. At that time, the present applicant and one employee Dinesh Chaudhary were present. The informant asked Ankit as to why liquor with expiry date was sold by them. It is alleged that the employee Dinesh started beating the informant; who resisted it. It is alleged that the applicant picked up a rod lying there and gave a blow on the right ankle causing injury. Thereafter the informant went to the hospital, took treatment and then lodged the F.I.R.

4. Learned counsel for the applicant submitted that the incident is not correctly described. In fact, the applicant himself was assaulted by Dilesh Damani; for which, the applicant has lodged his own F.I.R. vide C.R.No.843 of 2023 with the same

Borivali police station on 30.12.2023, at about 3.14a.m., under sections 324, 323 and 504 r/w. 34 of the I.P.C. The applicant has correctly described that, on 29.12.2023 at about 12.30a.m. the aforementioned Dilesh was present in the hotel and he started beating the present applicant. Dilesh picked up a rod lying there and chased the applicant. He gave blows on the back, left hand and on head. He, therefore, submitted that the applicant himself had suffered injuries.

5. Learned APP produced the investigation papers in respect of the investigation of both these offences i.e. C.R.No.842 of 2023, as well as, C.R.No.843 of 2023, registered at Borivali police station.

6. I have considered these submissions. The applicant Ankit had suffered injuries on left elbow caused by blunt weapon. The medical certificate described it as 'grievous injury'. However, the MRI did not reveal any fracture or deeper injury. The medical certificate shows that there was some injury on his elbow because of a blunt weapon. As

against that the informant Dilesh in this case has suffered fracture on his right ankle. Therefore, section 326 of the I.P.C. is applied. The question is whether at this stage it can be said that the applicant intended to cause grievous injury. In the present case, there is a statement of one Tarkeshwar. He was a security guard. He has stated that, around 12.30a.m. on 29.12.2023, a quarrel was going on between the applicant and the informant Dilesh. The applicant had fallen down on the stairs. He was picked up by the informant and this witness. Thereafter this witness had come down. After some time, the informant Dilesh came down limping. He told this witness that the applicant had assaulted him.

This shows that, there was a free fight between the applicant Ankit and the informant Dilesh. There was a quarrel and then the fight took place. The informant had gone to the hotel where the applicant was looking after the business on behalf of his uncle Manoj. Therefore, it is clear that the applicant had not gone to the informant and had not caused any assault in that process. The informant had come to his hotel and had picked up a quarrel. Even as per the allegation the applicant had picked up a rod lying

there and had given a blow on the right ankle. The entire event shows that the applicant was not the one who had started the fight. The incident had occurred on the spur of the moment. The applicant had not assaulted on any vital part. The applicant himself was assaulted. Therefore, it is difficult to observe that the applicant had an intention to cause grievous hurt. In this view of the matter, custodial interrogation of the applicant is not necessary. He can be protected U/s.438 of the Cr.p.c.

7. Hence, the following order :

ORDER

- i) In the event of his arrest in connection with C.R.No. 842 of 2023 registered at Borivali Police Station, Mumbai, the applicant is directed to be released on bail on his executing P. R. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- ii) The Applicant shall cooperate with the investigation.
- iii) The Application is disposed of.

(SARANG V. KOTWAL, J.)