

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

ANTICIPATORY BAIL APPLICATION NO.973 OF 2024

Feroz Khan S/o Fakir Mohd. Khan & Anr. Applicants

versus

The State of Maharashtra & Anr. Respondents

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- Mr. Tarak Sayyed a/w Mr. Ashif a/w Mr. Shahzeb Khan, Advocate for Applicants.
- Ms. Rajeshree Newton, APP for the State/Respondent.
- Mr. Nitin Satpute a/w Arti Bajpai a/w Deepak J., Advocate for Intervenor.

CORAM : SARANG V. KOTWAL, J.
DATE : 18th APRIL, 2024

P.C. :

1. The Applicants are seeking anticipatory bail in connection with C.R.No.149/2024, dated 26/03/2024, registered with Kurla Police Station, Mumbai, under sections 143, 147, 153-B, 323, 326, 386, 504, 506 r/w 34 of the Indian Penal Code. Subsequently, the investigation is transferred to Dharavi Police Station.

2. Heard Mr. Tarak Sayyed, learned counsel for the

Applicants, Mr. Nitin Satpute, learned counsel for the Intervenor and Ms. Rajeshree V. Newton, learned APP for the State.

3. The FIR is lodged by one Harun Takare. He has stated that he was a hawker selling shirts and T shirts outside Kurla Railway Station. The hawkers in the area were harassed by the anti-social elements in that area. He had named the Applicant No.1 as one of the accused. They were collecting extortion money from the hawkers. One of them was telling the informant to pay Rs.1 lakh for protection. The informant used to refuse to concede to their threats. On 02/09/2023 at about 02.00 p.m. about eight to nine accused came there. The informant had specifically named both the Applicants. They started abusing the informant and started demanding extortion money. One of them hit him from behind and all of them started assaulting him with kicks and fist blows. The accused Farhan assaulted him with an iron rod. There are other allegations about causing disharmony between the different communities. The informant had suffered injuries on his chest and shoulder. After that, the accused went away. The informant went to the police station, but he was sent

to Bhabha hospital. The doctor in that hospital sent him to Sion hospital. He was admitted and was treated. After his discharge he again went to the police station, but the officers at Kurla Police station did not register the FIR instead, registered NCR No.979/2023 u/s 323, 504, 506 of the IPC. Beyond that, the police did not take any action. In the meantime, the informant started feeling uneasy. He went to one private hospital. Then he went to K.E.M. Hospital, Parel. The police were not taking any action. The informant filed Criminal Writ Petition (ST) No.4263/2024 before this Court. A Division Bench of this Court passed an order in that Petition. After that, the informant went to the police station and thereafter this FIR is registered.

4. On the last occasion, the Investigating Officer was not present and therefore I had considered the prayer of the Applicants for ad-interim relief. It was submitted before the Court by the learned counsel for the Applicants that the certificate issued by Sion Hospital did not show any external injury and that there was undue delay in lodging the FIR. Based on these submission, since the Investigating Officer was not

present, I had granted ad-interim protection. However, that order was passed by way of ad-interim relief to give opportunity to the Investigating Officer to oppose this application. Accordingly, today learned APP produced the investigation papers before the Court. In this background, I have heard the parties.

5. Learned counsel for the Applicants made the following submissions:

He repeated his earlier submissions and added a few more submissions. According to learned counsel for the Applicants, the certificate issued by the Sion Hospital at the first instance is important. It shows that the informant was examined on 02/09/2023 and the certificate mentioned that there was no external injury. It is written in the bracket that there were no external injuries. In the column of nature of injuries it was written that it was a simply injury. It was also remarked that there was no evidence of any bleeding or fracture.

6. Learned counsel for the Applicants submitted that this supports the Applicants' case that the informant has made false allegations. He invited my attention to the NC registered on 02/11/2023, in which the informant had named only two accused i.e. Akram Pathan and Balle Pathan. He therefore submitted that the other accused are falsely implicated as an afterthought. He further submitted that even as per the FIR no role is attributed to either of these Applicants. The allegations of assault with rod is only made against the accused Farhan Pathan. Therefore, the Applicants' role can be separated. Learned counsel relied on the report prepared by the Assistant Commissioner of Police of Dadar Police Station on 02/11/2023, wherein it was mentioned that the informant was pressurizing the police. It was also mentioned that the medical certificates issued by Sion Hospital and Bhabha Hospital show that the informant had not suffered any injuries. It was further concluded that no cognizable offence was disclosed. There is inordinate delay in lodging the FIR.

7. On the other hand, learned APP relied on the investigation papers to oppose these submissions. She relied on

the medical papers attached to this application itself and also on the averments in the FIR. Learned counsel for the original informant supported the submissions made by learned APP.

8. I have considered these submissions. Initially, only an NC was lodged by the police. The ACP's report dated 02/11/2023 gives reason as to why cognizable offence was not disclosed. The Division Bench's order dated 13/03/2024 passed in Writ Petition (ST) No.4263 records that learned PP on instructions had submitted that the certificate issued by K.E.M. Hospital, Parel, Department of Radiology, was not placed before the police. Learned APP had submitted that the informant was directed to produce that certificate before the concerned officer and suitable actions would be taken. The Division Bench had directed the informant to attend the Kurla Police Station along with the said medical papers. The Assistant Commissioner of Police had assured to supervise the same. After that, the present FIR is lodged. In this view of the matter, I do not find any substance that there is inordinate, unexplained delay in lodging of the FIR.

9. In this context, the injuries suffered by the informant assume importance. Undoubtedly, the certificate issued by Sion Hospital mentions that there were no external injuries seen and the nature of injuries was described as simple. However, the medical papers show that the informant was treated as an outpatient on 02/09/2023. He was advised X-ray of left shoulder. The further papers at page No.58 of this memo shows that there was reference to the suspicion of fracture of 9th and 10th rib and other trauma. Therefore, the certificate issued at the first instance was not conclusive. The medical papers of that hospital shows that there was no evidence of palpable rib fracture or clavicle fracture. Obviously, X-ray was needed to rule out the possibility of fracture. The significance lies in the fact that right from day one, the informant was complaining of pain in the rib cage. It does not appear to be an afterthought. Significantly, the X-ray report of the same Sion Hospital dated 02/09/2023 itself mentions that the history was given by the informant that he was assaulted by 10 to 12 persons at 03.30 p.m. on 02/09/2023. In respect of that, the police officers had

named only two persons in the N.C. Therefore, it appears that the informant's grievance was not treated with the seriousness which it deserved. I do not find force in the submissions that the Applicants are not attributed any specific weapon of assault. The description in the order shows that all the accused had come together. One of them was carrying iron rod. They had come with the specific purpose, to obtain extortion money from the informant. Therefore, they were part of the unlawful assembly and hence section 149 of IPC is clearly applicable. The medical papers of K.E.M. Hospital show that there was a linear undisplaced fracture in the left 2nd rib and there was a linear undisplaced fracture of the base of the coracoid process of the left scapula of the informant.

10. Considering the seriousness of allegations and the available material, the Applicants do not deserve protection u/s 438 of Cr.P.C. The application is accordingly rejected.

(SARANG V. KOTWAL, J.)