

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

ANTICIPATORY BAIL APPLICATION NO. 3046 OF 2023

Shivam Omprakash Mishra	 Applicant
Versus	
The State of Maharashtra	 Respondent

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Mr. Ashley Cusher i/b B.P. Pandey a/w Atul M. Pandey, for the Applicant.

Ms. Mahalakshmi Pandey , APP for the State/Respondent.

**CORAM :SARANG V. KOTWAL, J.
DATE : 21st FEBRUARY, 2024**

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R. No. 267 of 2023 registered at Achole Police Station, on 18/05/2023 under sections 302 and 307 of I.P.C.

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

3. The FIR is lodged by one Arvind Tiwari. His nephew Raunak was staying with him. Raunak was studying in a college at Virar. He was 18 years of age. The Applicant was residing in the same building. The Applicant and one Kisan Jha were friends of Raunak. The Applicant and one Akhilesh Kumar @ Arman were conducting a tea stall near Gala Nagar Nagela Lake.

4. On 17/05/2023 when the informant was in the house, at about 3.45 p.m, Arman came to the informant's house and told him that the tea stall of the Applicant had caught fire. He did not know where Raunak was. The informant and Arman rushed to the tea stall. He saw that the fire brigade personnel had already extinguished the fire. Raunak and his friend Kisan Jha were lying outside the stall. Raunak had suffered bleeding head injury and had also suffered burn injuries. Blood was oozing from head and nose of Kisan Jha. The Applicant was sitting in the galli near the stall. His nose was bleeding. The Applicant had told them that some unknown person had assaulted all of them. Raunak was taken to the hospital but he was declared dead. Kisan Jha was

sent to Shatabdi hospital for treatment. On this basis the FIR was lodged. The informant had expressed his suspicion against the present Applicant.

5. After some time even Kisan Jha succumbed to the injuries. Thus two boys have died in the incident.

6. Learned counsel for the Applicant submitted that there are no eye witnesses to the incident. The case is based on the circumstantial evidence. The Applicant's story that some unknown person had assaulted all the three of them is a possible theory. The Applicant himself had suffered serious injuries. Even today, his health condition is not good. Therefore, he be granted protection under section 438 of Cr.P.C.

7. Learned APP produced the investigation papers before me. The post mortem notes of Kisan Zha shows that there were 8 injuries. Some of the injuries were burn injuries, particularly on the hands. However, there was one serious injury on the occipital region. Both the eyes had become black. There was an injury on

the left scapula. Cause of death was mentioned as 'death due to head injury, burns and pneumonia. Similarly the post mortem notes of Raunak shows that he had also suffered head injuries and the cause of death was the said head injury. Thus, there is no doubt that death was due to an assault with a heavy object. Two iron rods were recovered from the spot. There was blood on the floor in the tea stall. The gas cylinder pipe was found in burnt condition. Thus it is quite clear that after assaulting the deceased, the assailant had deliberately started the fire by using a gas cylinder.

8. Learned APP submitted that the Applicant and the two boys who died, were the only persons present in the tea stall and nobody else had entered that tea stall. Therefore, when the incident took place, only those three were present. These are the strong circumstances. She referred to a statement of one Dilip Dubey which was recorded under Section 164 of Cr.P.C. This witness had stated that the Applicant had told him that he had committed a mistake.

9. I have considered these submissions. The incident had taken place inside the tea stall. The Applicant is the only person who can explain what actually transpired inside the tea stall. There were two persons who had suffered head injuries and had succumbed to their injuries. Though the Applicant had also suffered some injury it was caused during that incident itself. This fact can only be explained by the Applicant himself.

10. The other crucial aspect in the matter is the fire which was deliberately started at the tea stall. Apparently, it was done to destroy the evidence. There is nothing to show that any other unknown person had entered the tea stall. Statement of Dilip Dubey has mentioned that after the incident the Applicant was saying that it was a big mistake. All these circumstances are incriminating against the Applicant. This is a matter in which two young boys have lost their lives. It is only the Applicant , who can explain the situation. His custodial interrogation is absolutely necessary. As far as the medical issue of the Applicant is concerned, that is the responsibility of the Investigating Agency.

Therefore, considering the seriousness of the offence and the strong incriminating circumstances against the Applicant, I do not find that it is a fit case to grant protection under section 438 of Cr.P.C. to the Applicant. The Application is rejected.

(SARANG V. KOTWAL, J.)