

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 169 OF 2025

1. Akram Fakir Mohammed Khan
 2. Udaidur Rehman Ishraq Ahmed Shaikh .. Applicants

Versus

The State of Maharashtra .. Respondent

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- Mr. S.A. Shaikh a/w Mr. Shafi Ahmed Shaikh for Applicants
- Ms. Rajeshree V. Newton, APP for State

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 22, 2025

P. C.:

1. Heard Mr. Shaikh, learned Advocate for Applicants and Ms. Newton, learned APP for the State.

2. This matter was heard at length by me yesterday when I had expressed my mind to Mr. Shaikh that I am inclined to dismiss the present Application. Mr. Shaikh would submit that Applicant would like the Court to pass an order on merits. In that view of the matter, present order is passed.

3. FIR is at page No. 48 of the Application. Date of incident is 26.03.2024. Indictment of Applicants before me is in connection with Crime No. 149/2024 registered with Kurla Police Station, Mumbai under Sections 143, 147, 153-B, 323, 326, 386, 504, 604 & 34 of the Indian Penal Code, 1860 (for short "**IPC**"). Applicants before me are

accused No. 1 - Akram Pathan @ Akram Fakir Mohammed Khan and accused No. 11 - Ubed @ Ubaidur Rehman Ishraq Ahmed Shaikh. Name of the first informant is Mr. Harun Kalandar Takare who is the hawker conducting his business of sale of garments outside Kurla railway station. According to the first informant and the case of the prosecution, accused persons are the members of Pathan gang. They are collecting Hafta (protection money) from the hawkers who hawk their goods outside Kurla Railway Station. Mr. Shaikh would submit that accused No. 1 is also an hawker who hawks his trade outside Kurla Railway Station. Allegations against the accused as can be seen from the FIR is that the accused demanded increase in the regular protection money (hafta) from the hawkers who hawk their trade outside Kurla Railway Station. First Informant being one of them opposed the escalation of the said hafta which enraged the accused. It is stated in the FIR that accused therefore demanded an amount of Rs. 1 Lakh from him as one time protection / fee. According to the First Informant, repeated demands were made for one time protection money / hafta along with threats. This position prevailed between June 2023 and September 2023.

4. When the incident occurred on 02.09.2023 at about 02:00 p.m, accused No. 1 i.e. Akram Pathan along with Farhan Pathan, Balle Pathan, Firoz Pathan, Ubed, Shakil Pathan, Ayyub Pathan, Aslam Fakir

Pathan, Salman Rashid Chaudhary, Irfan Rashid Chaudhary, Shahjad Pathan and Asif alias Shahrukh approached the First Informant, abused him and threatened him to pay Rs. 1 Lakh towards the alleged protection money and started beating the First Informant. FIR states that accused belonged to a gang called Pathan gang operating in that area and since June 2023 they were collecting hafta from the hawkers and they had increased the said protection money by Rs. 500/- to Rs. 1000/- which they used to collect from the shop establishments in that area as also the hawkers on that road. FIR states that First Informant and other shop establishments were extremely harassed with this situation and therefore the First Informant opposed the same. It is stated that the First Informant was approached repeatedly and given an alternative that he should make payment of Rs. 1 Lakh as one time protection money so that they would permit the First Informant to hawk his goods / garments by giving him a permanent protected place for hawking his goods. It is stated in the FIR that they threatened him that if he did not pay, then would not allow the First Informant to hawk his goods and they will allot the hawking place of the First Informant to some other person. Applicants need to note that rule of law prevails in this country. Areas outside the Railway Stations belong either to the Railways or to the State Government or the Municipal

Corporation on which hawking takes place. They do not belong to the Accused.

5. On the date of the incident, First Informant refused to comply with the demand made by the Applicants and their gang members. First Informant was mercilessly beaten up with fist and kick blows. According to the FIR, one out of the gang members hit the First Informant with some object from behind which led to serious and grievous injury. First Informant has stated that he did not see who out of the gang member was the person who assaulted him from behind but immediately thereafter others also started assaulting him with their hands and kick blows. First Informant has thereafter specifically stated that one of the gang member called Farhan Pathan assaulted the First Informant with an iron rod on his head and accused No. 1 at that time forced the First Informant to utter the slogan "Pakistan Zindabad". When First Informant resisted, he was hit on his chest and hand leading to rib fracture and fracture to his hand. Due to the shouts of the First Informant, passersby and other shopkeepers gathered on the incident spot. At that time one of the gang members namely Farhan Pathan threatened all those who gathered with the iron rod in his hand and warned them from interfering otherwise he would break their hands and legs. However since the crowd started gathering, the Pathan gang members left the incident spot.

6. First Informant thereafter went to the Police Station in an injured condition. Police immediately referred to him to nearby Bhabha Hospital. In Bhabha Hospital, First Informant was given preliminary first aid and he was immediately sent to the State run Sion Hospital considering his condition. First Informant took the medical aid and on that very date in the evening returned back to the Police Station with all the medical papers along with a copy of his complaint. Complaint was also lodged under Sections 323, 504 and 506 of IPC by Police. First Informant's case was that considering the incident and involvement of the accused, the said NC Complaint ought not to have been lodged. Nevertheless First Informant made a complaint to the Police Commissioner with respect to the incident in question. Three days after the incident, First Informant's condition worsened and he had to undertake medical treatment in a Private Hospital called Agashe Hospital from where due to his medical condition, he was referred to KEM Hospital. Medical papers of the First Informant from KEM Hospital are placed before me by the learned APP which shows linear undisplaced fracture in the left 2nd rib, linear undisplaced fracture of the base of the coracoid process of the left scapula, mild scarring in the right apex etc.

7. Grievance of the First Informant is that the Police Commissioner also did not take any cognizance of his complainant and therefore he

had no option than to approach this Court by filing a Writ Petition. First Informant filed Writ Petition (St) No. 4263/2024 in this Court. Division Bench of this Court (Coram : Revati Mohite Dere & Manjusha Deshpande, JJ) passed an order on 13.03.2024 wherein this Court had made reference of twin complaints dated 20.09.2023 and 10.10.2023 and relying upon the medical certificate issued by KEM Hospital at Parel, Departmental of Radiology passed an interim order in presence of Assistant Commissioner of Police who assured to supervise the grievance and complaint of the First Informant and it was recorded that the medical certificate was not brought to the notice of the concerned Police Officer and he had therefore came to the conclusion that the offence was merely an offence under Section 323 IPC and therefore he had closed the complaint on 02.10.2023. Undoubtedly the medical certificate issued by the State run KEM Hospital would not lie. It is placed on record by the prosecution before this Court of which cognizance has also been taken by the Division Bench of this Court. Thereafter papers were produced by the First Informant before the concerned Police Station pursuant to which present FIR has been lodged.

8. Mr. Shaikh after drawing my attention to the FIR would make one more submission. He would submit that the reference in the FIR if seen is attributable to the role of accused Nos. 1 and 4 whose names

are stated by the First Informant while describing the entire incident. He would submit that in so far as the role of accused No. 11 i.e. Ubed is concerned, his name does not figure in the FIR and hence accused No. 11 be given benefit of doubt. This submission of Mr. Shaikh would have been accepted if only the FIR would have been read because in the FIR, reference by the First Informant is to the Pathan gang comprising of their leading gang members called Akram Pathan, Balle Pathan, Firoz Pathan and other 7/8 persons of Pathan gang and at another place in the said FIR, First Informant has specifically referred to the time of the incident where he has named accused Nos. 1 to 10 except accused No. 11 i.e. Ubed. Therefore Mr. Shaikh would specifically argue that role of Ubed is not seen in the FIR at all and therefore there is no reason as to why he has been made an accused in the present case. This submission of Mr. Shaikh would have been acceptable if not for the CCTV footage of the incident which has been retrieved by the prosecution. The said CCTV footage clearly shows that Applicant No. 2 i.e. accused No. 11 Ubed actively participating in the assault on the First Informant.

9. In so far as the role of Applicant No. 1 i.e. Akram Pathan is concerned, I am inclined to dismiss his Application for grant of anticipatory bail considering his prominent role in leading the assault

on the complainant rather he is the leading gang member who led the Pathan gang leading to the incident in question.

10. Another submission made by Mr. Shaikh is that four accused have been granted anticipatory bail, three accused have been granted regular bail and one of the accused is enjoying interim protection from the Supreme Court. However in view of my aforesaid observations and findings which are clearly borne out from the record, I am not inclined to consider the case of both the Applicants at all as their complicity and participation in the crime is *prima facie* seen. Medical certificate clearly speaks for itself. The incident in question pertains to an issue clearly in the public domain. Today it has happened with the hawkers. Tomorrow it may happen with the various shopkeepers of the area also. These are my *prima facie* observations. Such unlawful assembly and the act of Applicants would not entitle them for any relief from this Court. Present Application for anticipatory bail is therefore dismissed.

[MILIND N. JADHAV, J.]

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