

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

Anticipatory Bail Application No.1581 of 2025

Shamith Shetty

Age 27 years, Occ. Service,

R/at: Flat No.402, 4th Floor,

Shree Ganesh Tower, Plot No.98,

Sector 21, Ghansoli, Navi Mumbai,

District – Thane – 400 701.

... Applicant

versus

1. The State of Maharashtra

Through Khar Police Station, Mumbai

represented by Learned Assistant

Public Prosecutor, Bombay High Court

Add: PWD Building, Bombay

High Court Premises, Fort, Mumbai-001.

2. Sumer Rajiv Menon

Age 23 years, Occ. Student,

At : B/1102, Maari Nagar, 11th Floor,

OLPS Building, Mahim (W), Mumbai.

... Respondents

Mr Sandesh D Patil a/w Mr Sandesh Deshpande, Mr Prithviraj Gole and Mr Atharva Salvi, for the Applicant.

Mr Arfan Sait, APP, for Respondent / State.

Mr Rahul Arote a/w Mr Chinmay Godse, Mr Sankalp Vichare and Mr Abhijeet Badar, for the Intervenor.

PSI Padalwar D.M., Khar Police Station, Mumbai.

Coram: R.N. Laddha, J.

Date: 13 June 2025

P.C.:

By this application, the applicant seeks pre-arrest bail in CR No.381 of 2025, registered at Khar Police Station, Mumbai, for offences punishable under Sections 115(2) and 118(2) of the Bharatiya Nyaya Sanhita, 2023.

2. The essence of the allegations is that on 30 May 2025, at about 00:15 hrs, the informant, accompanied by his friends, visited a pub located in Khar. While at the venue, the informant began to feel unwell and vomited. Between 01:15 and 01:30 hrs, the applicant approached the informant and insisted on consuming a glass of lemon water. Despite the informant's refusal to accept the drink, the applicant suddenly and without provocation assaulted the informant with a glass tumbler in his left eye and punched him in the eyes. As a result, the informant sustained a grievous injury.

3. Mr Sandesh Patil, the learned Counsel appearing on behalf of the applicant, submits that there was an unexplained delay in the registration of the FIR, which casts doubt on the veracity of the complainant's version and events. He further submits that the medical records state that the injury sustained by the informant to his left eye was the result of a physical

punch and not by the use of any external object or weapon. Consequently, the claim regarding the need for recovery of a weapon is without basis. The learned Counsel contends that, although four other individuals reportedly accompanied the complainant at the time of the incident, none attempted to intervene or diffuse the alleged altercation between the informant and the applicant. This inaction raises serious doubts about the occurrence of the incident in the manner prescribed. The applicant's identity was allegedly ascertained through the establishment (bar) manager in question. However, the physical description provided by the manager does not correspond to that of the present applicant, thereby introducing further uncertainty about the involvement of the applicant in the alleged offence. The learned Counsel points out that the complainant was not taken to a government hospital for medical treatment but was instead admitted to a private hospital. Further, the complainant's mother is a practising dentist known to have professional connections with the said private hospital. The applicant is willing and ready to cooperate with the investigation.

4. On the other hand, Mr Arfan Sait, the learned Additional Public Prosecutor representing respondent No.1/ State, and Mr Rahul Arote, the learned Counsel appearing on behalf of the

respondent No.2, vehemently oppose the applicant's plea for pre-arrest bail. They submit that the allegations against the applicant are serious and supported by substantial material on record. It is specifically alleged that the applicant assaulted the informant using a glass tumbler and punched him in the left eye, resulting in grievous injury. The informant has already undergone one surgical procedure and, as per the medical opinion, is likely to require additional surgeries in the future. Furthermore, they submit that the weapon used in the assault, i.e., the glass tumbler, is yet to be recovered. The prosecution also relies on CCTV footage that captures the incident. There are eyewitnesses who can also corroborate the version of events as narrated by the informant.

5. This Court has given anxious consideration to the rival contentions canvassed across the Bar and perused the records.

6. It is a settled position in law that granting pre-arrest bail is an extraordinary power. While regular bail is generally considered the norm, the same principle does not apply to anticipatory bail. Considering each case's circumstances, the Court must exercise careful and prudent discretion when deciding whether to grant anticipatory bail. There is no straitjacket formula. Caution is necessary, as granting protection in serious cases could potentially hinder investigation or lead to

a miscarriage of justice by allowing tampering with evidence. A profitable reference in this regard must be made to the Hon'ble Supreme Court's decision in *Srikant Upadhyay v. State of Bihar*, 2024 SCC OnLine SC 282.

7. Upon perusing the records, it appears that the applicant has been specifically named in the FIR, with a clearly defined role in the alleged offence. The FIR attributes to the applicant an act of physical assault wherein he allegedly struck the informant in the left eye using a glass tumbler and further punched him in the same area, resulting in serious ocular injury. The medical documentation supports these allegations, indicating that the informant suffered a left parietal globe rupture, loss of spherical contour of the eyeball, mild enophthalmos, and the presence of intra-ocular air foci. These medical findings are consistent with the nature and location of the alleged assault and lend credence to the informant's version of events. The records further reflect that the assault was sudden and unprovoked. The applicant is alleged to have, without any apparent provocation, attacked the informant by striking him in the left eye with a glass tumbler, followed by a punch in the same area. The weapon allegedly used in the commission of the offence, a glass tumbler, has not yet been recovered. Significantly, the incident was captured on CCTV,

and there are eyewitnesses whose statements corroborate the account provided by the informant, further strengthening the prosecution's case at this preliminary stage.

8. In view of the aforementioned circumstances and the *prima facie* material available on record, this Court does not find it a fit case to exercise its discretion in favour of the applicant. Accordingly, the present anticipatory bail application stands rejected.

[R.N. Laddha, J.]