

Anand

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

BAIL APPLICATION NO.2124 OF 2014

Hussain alias Ibrahim Yakub .Applicant
Shaikh

V/s.

The State of Maharashtra .Respondent

Mr.P.G.Sarda, Advocate, for the Applicant
Mrs Rutuja Ambekar, APP, for the Respondent -
State

CORAM : P.D.KODE, J.

DATE : 20TH DECEMBER, 2014

P.C.

. Heard.

2. By this application, the applicant charge sheeted along with 11 more persons for commission of the offences 120B, 212, 307 r/w.34 of the Indian Penal Code has prayed for bail.

3. The offence in question was registered

upon the FIR lodged by one Vaibhav Chaudhari, cousin of the victim regarding an incident of assault which had occurred on 25.07.2013 at about 12:15 p.m.. The report was promptly lodged at about 2:45 p.m.. The most material part of the report reveals that at about 12:15 p.m. when the victim came out of Sudarshan Grampanchayat Karyalaya, Sortapwadi, Mahadeo Nagar, Taluka - Haveli, District - Pune and was opening the door of the vehicle, persons known to the first informant from their village i.e. Rajendra Chaudhari, Vitthal Gade and the applicant came at the said place. It reveals that Rajendra was armed with Sattoor, Vitthal and the applicant were armed with the Swords. It further reveals that without giving an opportunity to the victim, all of them started inflicting the blows on the victim. It reveals that Rajendra inflicted the blow on the rear side of the head of the victim and on the left arm of the victim while Vitthal

inflicted blow from the upper side of the head, hands and shoulders and on the face of the victim. While the applicant **"on the upper part of the head, on hands and at shoulder of the right hand"**. It reveals that before the first informant and Ravindra Gunjal could come for helping the victim, the assailants had ran away.

4. The further part of the FIR reveals that they had taken the victim to Marathe Hospital at Kunjirwadi and from the said place doctor referred him to Nobel Hospital and thereafter, the FIR was lodged.

5. Mr.Sarda, learned counsel for the applicant has pressed the prayer for bail on the count that (i) the offence for which the applicant is charge sheeted is not exclusively punishable with death or imprisonment for life; (ii) the injured is out of danger and

discharged from the Hospital; (iii) papers do not contain any material about any recovery being effected at the behest of the applicant; (iv) even clothes of the applicant were not found to be stained with bloods; (v) charge sheet does not contain any material revealing the reason/motive behind the assault & (vi) the applicant is not having antecedents.

6. Even accepting all the aforesaid submissions being true, still the offences for which the applicant has been charge sheeted being punishable with imprisonment which may extend for life as ten injuries have been found have been sustained by the victim and thus all the offences alleged being non-bailable, the only question arises whether discretion deserves to be exercised in favour of grant of bail or otherwise.

7. Now, considering the material against

the applicant, his involvement in the incident is squarely borne from the promptly lodged FIR within a period of two hours after the incident. His presence is borne from the statement of the other eye witnesses i.e. Ravindra and Sudarshan. Thus, the material regarding participation of the applicant can never be said to be incredible. Now, considering the manner in which merciless attack was made of which his result is seen to be victim sustaining 16 injuries coupled with the fact that the victim was required to be hospitalized for a period of 21 days and Medical Certificate at page No.158 amongst others revealing injuries to effect "No significant intracranial abnormality is noted in this study. Communited **Mildly displaced fracture of high parietal skull vault**. Tiny air foci in high parietal region". It is difficult to accept that the assailants were not entertaining intention to murder the

deceased. Having regard to it, merely because he is survived conclusion that cannot be drawn that the assailants were not entertaining an intention to commit murder.

8. Learned counsel for the applicant had made strenuous efforts by drawing attention to page No.157 by submitting that the injuries were simple in nature. It is difficult to accept the said submission considering nature of the weapons used and as many six injuries were inflicted on head and out of it, four being found on parietal skull vault.

9. In the said context, it can be added if the Swords are used for assaulting upon the head, natures of injuries found upon the head then only injuries of depth as sustained by the victim could be expected. Hence, sustaining of such injuries is consistent with such account of the incident given by the eye

witnesses.

10. Thus, considering the facts and circumstances of the crime in question, it is difficult to accede with the prayer for bail. It is also well settled legal position that absence of the motive cannot be considered as ground for out weighing the oral account of the incident as spelt from the statements of eye witnesses, so also merely because of absence of the material regarding motive in charge sheet cannot be said to be a good ground for exercising discretion in favour of grant of bail.

11. The Bail Application stands rejected. Thus, considering all the aforesaid aspects, prima facie there is no substance in the submission that the offence punishable under Section 307 of the Indian Penal Code would not be attracted in the facts & circumstances of

the present case.

12. Resultantly, there are no merits in the application.

(P.D.KODE, J.)