

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 6102 OF 2015

Juber Khan s/o Nabi Khan @
Juber Ahmed Abdul Nabi

..... **APPLICANT**

V E R S U S

The State of Maharashtra

.... **RESPONDENT**

.....

Mr. N.R.Shaikh, Advocate for Applicant.

Mr. A.R.Kale, A.P.P. for Resp. - State.

.....

CORAM : INDIRA K. JAIN, J.

DATE : 5th DECEMBER, 2015

ORAL ORDER :-

. This is an application for anticipatory bail in Crime No. 195/2015 registered at Bazarpeth police station, Bhusawal, district Jalgaon for the offence punishable u/s 307 read with section 34 of the Indian Penal Code.

2. Heard Mr. N.R.Shaikh, learned counsel for applicant and Mr. A.R.Kale, learned A.P.P. for Respondent – State. Perused papers of investigation.

3. F.I.R. was lodged by Faizal Baig Salim Baig Mirza resident of Bazarpeth, Bhusawal, Taluka Bhusawal,

district Jalgaon. On 24/10/2015 at around 7.00 p.m. applicant, complainant and one more person went on motorcycle to a building which was under construction. Third person stayed near the motorcycle. Applicant and informant proceeded to the building. It is alleged that when they were climbing the steps and going to third floor, applicant who was on the lower step had given a kick and pushed the informant, due to which he fell down in a septic tank and sustained grievous injuries.

4. Learned counsel for applicant vehemently contended that before the alleged incident, applicant and informant had no enmity. There was no previous dispute. They shared soft drink together and went to the building. Learned counsel submits that applicant was on the lower step and informant was on higher step and in such a situation it was not possible for applicant to kick the informant as alleged in F.I.R. Learned counsel further submits that the building was under construction and there is every possibility of accidental fall. Considering the role attributed to applicant, learned counsel prayed that protection be granted to applicant and his application be allowed.

5. Per contra learned A.P.P. referred to F.I.R., injury certificate and supplementary statement of complainant recorded on 27/10/2015 and submitted that applicant was responsible for intentionally causing injuries to the injured. The role is specifically attributed to applicant in F.I.R. and considering the seriousness of

offence learned A.P.P. prayed to reject the application.

6. As can be seen from F.I.R., there was no previous animosity between applicant and complainant. Both had shared soft drink before leaving to the site of construction. As referred in F.I.R. it was dark and building was under construction. The duo were climbing the third floor of building. Applicant was on the lower step and informant was on higher step.

7. In such circumstances prima facie involvement of applicant in the commission of alleged attempt to commit murder of complainant appears to be doubtful. Custodial interrogation of applicant is not necessary. Learned A.P.P. submits that third person who was near motorcycle is absconding. To trace his whereabouts custodial interrogation of applicant is necessary. This can not be a ground to reject the application as care can be taken by imposing suitable condition.

8. In the light of the above this Court is inclined to allow the application. Hence, the following order.

ORDER

(i) Criminal Application No. 6102 of 2015 is allowed.

- (ii) In the event of arrest of applicant Juber Khan s/o Nabi Khan @ Juber Ahmed Abdul Nabi in Crime No. 195/2015 registered at Bazarpeth police station, Bhusawal, district Jalgaon for the offence punishable u/s 307 read with section 34 of the Indian Penal Code he shall be released on bail on P.R. and S.B. of ₹ 15,000/- [Rupees Fifteen Thousand] each.
- (iii) Applicant shall not tamper with the prosecution evidence and shall make himself available for investigation as and when required.
- (iv) In case applicant fails to co-operate the investigating agency, prosecution will be at liberty to move for cancellation of the protection.

[INDIRA K. JAIN]
JUDGE