

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 167 OF 2015**

Hamid Ebrahim Khan ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Mohammed Amin Solkar for the Applicant

Mr. Y. M. Nakhwa, A.P.P for the Respondent-State

PI Mr. S. V. Salvi from Byculla Police Station is present

CORAM : REVATI MOHITE DERE, J.

MONDAY, 16TH FEBRUARY, 2015

P.C. :

1. Heard learned Counsel for the applicant and the learned A.P.P for the State.
2. By this application, the applicant seeks bail in connection with C.R. No. 266 of 2014 registered with the Byculla Police Station for the alleged offences punishable under Sections 143, 144, 145, 146, 148, 149, 326, 307, 504 and 506 of the Indian Penal Code r/w 37(A) and 135 of the Bombay Police Act.
3. The present applicant along with seven other accused has been arrested in connection with the aforesaid C.R. According to the

prosecution, the alleged incident took place on 26th September, 2014 at about 19:00 hrs. According to the complainant, he had called up the applicant with regard to an earlier incident and had called him to his residence for a meeting. It is alleged that during the meeting in the compound of the residence, the complainant requested the applicant to forgive Mushran and resolve the dispute. It is alleged that instead of resolving the dispute, the applicant started talking rudely to the complainant and as soon as the complainant's son Mushran reached there, the other co-accused Shoaib, Shehzad, Amir Mapari and Waqar Mapari came there armed with iron rod, hockey stick and belt and started assaulting Mushran with the said weapons. Mushran was thereafter taken by the complainant to the J. J. Hospital and during his treatment, it was learnt that Arbaaz and one Shadab were also undergoing treatment in the same hospital. On inquiry with Arbaaz, the complainant was allegedly told that they two were assaulted by Shoaib Khan, Amir Mapari, Mohammed Zamirullah Khan and Shehzad Khan. Thereafter, the complainant lodged a complaint with the Byculla Police Station regarding the aforesaid incident.

4. The learned Counsel for the applicant contended that with

regard to the same incident, a cross case has been registered as against the complainant and others vide C.R. No. 267 of 2014 by co-accused Shehzad Khan. Learned Counsel for the applicant contended that as far as the present applicant is concerned, no role has been assigned to him. He contended that the applicant had gone there to resolve the dispute and there is nothing on record which has come in the form of a statement to show that the applicant was carrying any weapon with him at the relevant time. He submitted that three accused have already been released on bail by the Sessions Court.

5. Learned A.P.P submitted that although there is no specific role assigned to the applicant, the two injured witnesses i.e. Mohammed Shadab Shahid Qureshi and Arbaaz Farooque Khan have disclosed in their statements that the applicant was also present at the time and was armed with a weapon.

6. From a perusal of the charge-sheet, it is evident that Farooque Abbas Khan, who is the complainant in the aforesaid C.R., has not attributed any role to the present applicant. In the FIR, it is stated that

Shoaib was armed with an iron rod; Shehzad with a hockey stick and Waqar with a belt. There are six witnesses to the incident. Out of the six witnesses, only two have made a statement that the applicant was also found with the weapon along with the other accused. The statement of the two eye-witnesses, who have stated that the applicant was also armed with the weapon, was recorded much after the registration of the FIR.

7. Considering the fact that the applicant has not been assigned with any overt act, the applicant is entitled to be enlarged on bail on the following terms and conditions :

ORDER

(i) The applicant Hamid Ebrahim Khan be released on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- with one or two solvent sureties in the like amount;

(ii) The applicant shall not tamper or attempt to contact any witness concerned with the case and shall cooperate in the conduct of the trial;

(iii) The applicant shall inform his latest place of residence immediately after being released and/or change of residence, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the local Police Station;

(iv) If there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of applicant's bail.

8. The Application is accordingly disposed of.

REVATI MOHITE DERE, J.