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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.163 OF 2015

Rohit T. Mishra	...	Applicant
V/s.		
The State of Maharashtra	...	Respondent

Mr.Abhishek Yende, for the Applicant.
Ms.Rutuja Ambekar, APP for the State.
PI. S.K.Jadhav, Bazar Peth Police Station, Kalyan.

CORAM : REVATI MOHITE DERE, J.

DATED : 17th FEBRUARY, 2015.

PC.

1. Heard learned counsel for the Applicant and learned APP for the Respondent - State.
2. By this application, the applicant seeks pre-arrest bail in connection with C.R. no.I-257 of 2014 registered with the Bazar Peth Police Station, Kalyan, for the alleged offences punishable under Sections 307, 324, 323, 504 r/w 34 of the Indian Penal Code.
3. The complainant – Ishwarlal Mishra is the cousin of the applicant

and the co-accused Mr. Tahsildar Mishra is the father of the applicant and paternal uncle of the complainant. According to the prosecution, there was an ongoing dispute between the parties with regard to the ancestral house, which was situated at Valipeer Road, Bail Bazar, Kalyan (W). The said property which consists of four rooms, a hall and tabala has not been partitioned. Two rooms are in the possession of the complainant and two rooms and hall are in the possession of the accused persons. According to the prosecution on 21st October, 2014, at about 11.00 a.m., when the complainant had been to his ancestral house to collect his clothes from the cupboard, he noticed that a cot was kept in the front of the cupboard. As the complainant shifted the cot, the accused persons are alleged to have started a quarrel with the complainant. It is alleged that the present applicant threw a packet of chili powder in the eyes of the complainant, whereas the other co-accused i.e. father of the applicant assaulted the complainant with fist blows. It is also alleged that the co-accused held the complainant from behind and the applicant assaulted him with a weapon on his head and bit the thumb of the complainant.

4. Learned Counsel appearing on behalf of the applicant states that although the incident in question is alleged to have taken place on 21st

October, 2014, there is a delay in lodging the FIR, inasmuch as, the same is lodged on 23rd October, 2014 i.e. after two days of the incident. He submitted that though at the time of the assault police had arrived, no FIR or complaint was lodged on the day of the incident. According to him, the complainant and others had infact assaulted the accused person, as a result of which the co-accused had also suffered serious injuries. He submitted that the police did not register any FIR with regard to the same but registered an NC with regard to the said incident. He submitted that essentially in view of the dispute with regard to the ancestral property, a false complaint was registered as against the applicant. He submitted that infact the injury sustained by the complainant was as a result of the complainant falling on the iron cot and not as a result of a weapon blow allegedly used by the applicant. He submits that the applicant was not present at the spot of the incident. He submitted that the applicant is a student studying in TY.BSc from K.M.Agrawal College of Arts and Science, Kalyan (W). He has produced an identity card of the said college as well as the hall ticket of the 5th Semester BSc examination. He submitted that if the applicant is taken into custody the applicant's future will be jeopardised.

5. The learned APP has opposed the present bail application.
6. Perused the medical certificates. It appears that in one medical certificate it is clearly mentioned in the history of assault, that 'assault by instillation of chilli powder by group of known people at around 11.00 a.m. at Kalyan' and in another medical certificate it is mentioned that 'assault by uncle today at 11.30 a.m at Kalyan at home'.
7. It is not in dispute that an NC was lodged by the applicant's father with regard to the same incident. It is also not disputed that the applicant is pursuing his studies i.e. B.Sc. from K.M.Agrawal College of Arts and Science. Considering the peculiar facts of the case ; the fact that the applicant is a student and the discrepancies in the medical certificate, the applicant deserves to be granted pre-arrest bail on the following terms and conditions :

ORDER

- i) In the event of the arrest, the Applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount ;

- ii) The Applicant shall attend the Bazar Peth Police Station, Kalyan on every Wednesday and Saturday, between 6.00 p.m. to 7.00 p.m, till the filing of the charge sheet ;
 - iii) The Applicant shall not tamper or attempt to influence the complainant or any persons concerned with the case.
 - iv) The Applicant shall co-operate with the Investigating Agency.
8. The Application is allowed and disposed of in above terms.
9. Parties to act upon the authenticated copy of this order.

(REVATI MOHITE DERE, J.)