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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.306 OF 2015

Mohd. Ismail Mashhoor Idrisi	...	Applicant
V/s.		
The State of Maharashtra	...	Respondent

Mr.Amrish Salunke, for the Applicant.
Ms.S.S.Kaushik, APP for the Respondent – State.

CORAM : REVATI MOHITE DERE, J.
DATED : 25th MARCH, 2015.

PC.

1. Heard the learned counsel for the Applicant and the learned APP for the Respondent-State.
2. By this application, the applicant seeks pre-arrest bail in connection with C.R.No.209 of 2014 registered with the Sakinaka Police Station, Mumbai, for the alleged offences punishable under Sections 143, 144, 146, 147, 148, 149, 324, 307, 302 of the Indian Penal Code.
3. The incident in question has taken place on 14th April, 2014 at about 11.30 p.m. The complaint has been lodged by Rashid Azhar Maniyar, who is the son of the deceased. According to the prosecution, on

14th April, 2014, as is reflected from the statement of the eye-witnesses, in the first incident, the driver of the deceased one Mehboob Shaikh was assaulted by Mehfooz Ali @Shahenshah Mehamood Ali Idrisi @ Taylor ; Mohammed Akram Mansoor Ahmed Idrisi @ Taylor ; Abdul Salim @Chiya Abdul Aziz Idrisi @ Taylor ; Abdul Asim @ Nepali Abdul Aziz Idrisi @ Taylor and the present applicant - Mohd. Ismail Mashhoor Idrisi, by wooden logs, bamboo sticks and iron rod. It appears from the statement of the eye-witnesses, that apart from the assault on the driver – Mehboob Shaikh, one Hussain was also assaulted by the aforesaid accused persons. According to the eye-witnesses, on being informed of the said assault on the driver – Mehboob Shaikh and Hussain Maniyar, the deceased – Yasin Maniyar and the complainant – Rashid Maniyar, arrived at the spot. It is alleged that on seeing the deceased and the complainant, Mehmood Ali @Pappu @ Chappan Tikali, Abdul Majid Idrisi, caught them and assaulted them. Thereafter, all the accused are stated to have gone in that direction. It is alleged that co-accused – Akram assaulted Rashid (complainant) with a wooden log, as a result of which he fell down. On seeing this, it is alleged that both the deceased and the complainant started running towards their home, when the deceased – Yasin stumbled and fell down on the road. It further appears from the statement of the

eye-witnesses that Pappu @ Chappan Tikali picked up a big stone and threw it on the head of the deceased. Thereafter, Pappu @ Chappan Tikali is alleged to have told Akram to ensure that the deceased is killed. Thereafter, Akram is also stated to have picked up the very same stone and thrown it on the head of the deceased. Thereafter, Shahenshah is also alleged to have picked up the stone to throw it on the deceased, however, the deceased's daughter is stated to have pushed Shahenshah. According to the eye-witnesses, Akram, Aziz, Shahenshah and Mohid @Moida are stated to have thereafter assaulted the deceased. After ensuring that the deceased- Yasin was dead, all the accused are stated to have left the place.

4. Learned Counsel for the applicant contended that the name and the presence of the applicant has not been disclosed by the complainant in the FIR. He submitted that from a perusal of the statement of the eye witnesses it is evident, that in the subsequent incident that took place i.e. the assault on the deceased and the complainant, no overt act has been attributed to the present applicant. He submitted that there is also no recovery at his instance.

5. Learned APP opposed the bail application. She submitted that there

is long standing dispute between the parties i.e. the family members of the deceased and the accused persons. She submitted that six months prior to the incident, i.e. sometime in April, 2014, the deceased had lodged a complaint, as some of the accused had thrown water on the complainant's daughter. Thereafter, within one month of the said incident of April 2014, another incident had taken place, where the accused are alleged to have thrown some material on an empty plot of land behind the complainant's house, for which the deceased had also lodged an NC.

6. Perused the charge-sheet. Two incidents took place within a short span; first is the assault on Mehboob and Hussain and then when the deceased and complainant reached the spot, an assault on them. With regard to the submission, that the applicant has not been named in the FIR, it appears that when the complainant arrived at the spot, the alleged assault on the driver – Mehboob Shaikh and one Hussain was over and therefore the presence of the applicant is not disclosed in the FIR. A perusal of the statement of the eye-witnesses and the complainant, would reveal, that the applicant had not played any role in the assault on the deceased or on the complainant. As far as assault on the Mehboob Shaikh and Hussain is concerned, perused the injury certificates. Both the injury

certificates of Mehboob Shaikh and Hussain show that the injury sustained by them are simple in nature and are in nature of 'contusion coupled with abrasion.'

7. Considering the nature of allegations and more particularly as no overt act has been attributed to the present applicant, qua the assault on the deceased and the complainant, the Applicant deserves to be enlarged on bail on the following terms and conditions :-

ORDER

- i) The Applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.15,000/- with one or two sureties in the like amount ;
- ii) The Applicant shall attend the Sakinaka Police Station, Mumbai, on every Sunday, between 11.00 a.m. to 12.00 noon, till the conclusion of the trial ;
- 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 in the conduct of the trial.

v) It is made clear that if there is breach of any of the conditions as stated above, the prosecution shall be at liberty to seek cancellation of Applicant's bail.

8. The Application is allowed and disposed of in above terms.

9. Needless to observe, that the learned Judge shall decide the case on its own merits uninfluenced by the observations made in this order.

10. Parties to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)