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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.360 OF 2015

Mohammad Jamirullah Khan	...	Applicant
V/s.		
The State of Maharashtra	...	Respondent

Mr.M.S.Mohite i/b Mr.Sayed Zia Amir Mohiddin, for the Applicant.
Mr.S.H.Yadav, APP for the Respondent – State.
PI – Sunil Salvi, Byculla Police Station.

CORAM : REVATI MOHITE DERE, J.
DATED : 2nd MARCH, 2015.

PC.

1. Heard learned counsel for the applicant and learned APP for the Respondent – State.

2. By this application, the Applicant seeks his enlargement on bail in connection with C.R.No. 266 of 2014 registered with the Byculla Police Station, Mumbai for the alleged offences punishable under Sections 143, 144, 145, 146, 147, 148, 149, 326, 307, 504 and 506 of the Indian Penal Code.

3. According to the prosecution, on 26th September, 2014, two

incidents took place between the parties, one at about 8.00 to 8.30 p.m. and the second, between 9.00 to 9.30 p.m. The complainant - Farukh Khan was an eye-witness to the first incident and not the second incident, in which the present applicant was allegedly involved. Admittedly, the present applicant was not present at the time of the first incident. It is alleged by the prosecution, that in the second incident that took place, the present applicant assaulted the injured - Arbaz with an iron rod in the stomach. It is alleged that the injury sustained by the injured was a grievous injury.

4. According to the learned counsel for the applicant, there is a discrepancy in the statement of the eye witnesses with regard to the presence of the applicant on the spot, at the time of the second incident. It is submitted that in the EPR, the name of the applicant does not find place, as an assailant or as the person who had inflicted an injury or as having participated in the alleged assault on Arbaz and Shahadab Qureshi. The learned counsel further submitted that the injury certificate which is at page 37 of the application, shows only one injury on the stomach of Arbaz. According to him, the said injury is alleged to have been first inflicted by co-accused - Shoeb Khan and thereafter by the present

applicant. He submitted that a perusal of the statements of the 6 eye-witnesses reveals, that no role has been attributed by any of them to the applicant and, that it is merely stated by them, that the applicant was present at the spot. He submitted that infact the present applicant was not present at the spot of the incident and there is a CCTV footage in support of the same.

5. Learned APP opposed the bail application. He submits that from the perusal of the statement of the injured Arbaz, it is evident that the injured was first stabbed by Shoeb Khan and thereafter by the present applicant.

6. Perused the charge-sheet and in particular the statements and the injury certificate. It appears that there are cross cases with regard to the same incident between the parties and that co-accused – Shehazad Khan has also lodged an FIR being C.R.No.267 of 2014, alleging offences punishable under Sections 143, 144, 145, 146, 147, 148, 149, 324, of the Indian Penal Code. Admittedly, the applicant was not present at the time of the first incident. With regard to the second incident there is a discrepancy with regard to the actual assault, whether the same has been

inflicted by the present applicant. According to the injured – Arbaz, Shoeb Khan first assaulted him and thereafter the present applicant, whereas according to the eye-witnesses, Shoeb Khan assaulted Arbaz with a weapon on his stomach. The eye-witnesses, have not attributed any overt act to the applicant. The injury certificate shows only one injury in the stomach which is a grievous injury.

7. Considering the material on record, 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.25,000/- with one or two sureties in the like amount ;
- ii) The Applicant shall attend the Byculla Police Station, Mumbai once a fortnight on Saturday between 10.00 a.m. to 11.00 a.m., till the conclusion of the trial;
- iii) The Applicant shall not tamper or attempt to influence any person 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. The aforesaid observations are prima-facie, and the Trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

10. Parties to act upon an authenticated copy of this order.

(REVATI MOHITE DERE, J.)