

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 396 OF 2015**

Abdul Rahim @ Hafizjee

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. D. R. Singh for the Applicant

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

API Mr. Netke from Shivaji Nagar Police Station, Mumbai, is present

CORAM : REVATI MOHITE DERE, J.

THURSDAY, 16TH APRIL, 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 his enlargement on bail in connection with C.R. No. 331 of 2013 registered with the Shivaji Nagar Police Station, Mumbai, for the alleged offences punishable under Sections 302, 326, 324, 504, 506(ii). 143, 147, 148, 149 of the Indian Penal Code, 1860.

3. The incident in question has taken place on 22nd October, 2013. The complainant is the wife of the deceased, who is also an injured in the said case. She has alleged in the complaint, which was lodged on the very same day, that the incident took place on 22nd October, 2013 at about 9:00 a.m. She has alleged that the dispute took place, as her two year old niece moved the iron partition of the accused. It is alleged that Sharif Mulla came to the complainant and stated that her niece was breaking the iron partition and told to take care of her. It is alleged by the complainant that she retorted that the girl was two years old and what damage could she do. As a result of which, Sharif Mulla abused the complainant and the complainant also abused him. She has further alleged that as a result of the abuses, Sharif Mulla came back with a bamboo and assaulted her on her head and on her hand, as a result of which, she sustained simple injuries. It is alleged that on hearing her hue and cry, her husband Tabrez Khan, sister Shabana and nephew Mustafa Fakir Mohd. Shaikh came there, pursuant to which, Sharif Mulla assaulted the husband of the complainant on his right leg, as a result of which, her husband sustained a fracture. She has further alleged that Saddam Shaitan Mulla also assaulted her husband with a

bamboo stick and Mustafa Fakir Mohd. Shaikh also assaulted the complainant as well as her husband on the shoulder by a bamboo stick, as a result of which, he sustained a fracture. She also alleged that Naushad Siddiquie @ Pehalwan assaulted her sister Shabana with a bamboo stick on her right hand and that Rizwan Ishtiyaque Khan also assaulted her husband on his back and stomach with a bamboo stick and thereafter ran away. She has further alleged that while leaving the said place, they threatened to kill all of them. Hence, the complainant went to the police station to lodge a complaint.

4. The learned Counsel for the applicant contended that the complainant has not disclosed the name of the present applicant in the FIR/complaint, despite the fact that the applicant was known to the complainant. He submitted that the applicant has been named by the complainant, for the first time, in the supplementary statement dated 26th October, 2013. He submitted that none of the injured witnesses have taken the name of the present applicant and that only subsequently, in their supplementary statements, the present applicant has been roped in.

5. Learned A.P.P does not dispute the fact that the applicant has not been named in the FIR and that he has been named, for the first time by the complainant and others, only in their supplementary statements.

6. Considering the fact that the applicant has not been named in the FIR, despite the fact that the applicant was known to the complainant and that, he has been named for the first time in the supplementary statement recorded on 26th October, 2013, and that no role has been attributed to the applicant, this is a fit case to enlarge the applicant on bail on the following terms and conditions :

ORDER

(i) The applicant Abdul Rahim @ Hafizjee be released on bail in connection with C.R. No. 331 of 2013 registered with the Shivaji Nagar Police Station, Mumbai, on executing PR Bond in the sum of Rs. 15,000/- with one or two sureties in the like amount;

(ii) The applicant shall attend Shivaji Nagar Police Station, Mumbai, once in a month on the first Saturday of every month between 10:00 a.m. to 11:00 a.m. till the conclusion of the trial;

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

(iv) The applicant shall not tamper or attempt to contact any witness concerned with the case;

(v) The applicant to cooperate with the conduct of the trial;

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

7. It is made clear that 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.

8. The Application is allowed in the aforesaid terms and is accordingly disposed of.
9. Parties to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.