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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.473 OF 2015

Gulam Hussain Mohabaat Ali Sheikh @ Babu ... Applicant

V/s.

The State of Maharashtra ... Respondent

Mr.E.B.Dixit i/b Mr.Ajay Tripathi, for the Applicant.

Ms.A.T.Javeri, APP for the Respondent – State.

PI – Kewale, Pantnagar Police Station, Mumbai.

CORAM : REVATI MOHITE DERE, J.

DATED : 8th APRIL, 2015.

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1. Heard 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.393 of 2014 registered with the Pantnagar Police Station, Mumbai, for the alleged offences punishable under Sections 302, 326, 324, 143, 144, 146, 147, 148, 149, 452, 506, 427, 120(b) of the Indian

Penal Code.

3. The incident in question is alleged to have taken place on 27th October, 2014, at around 1.00 p.m. in the afternoon. It is alleged by the complainant – Shabbo Shaikh that she had gone to meet her sister Rashida (deceased) and Shabnam Shaikh on 27th October, 2014. She has alleged that Tambi, Razia, San, friend of San, Karima, brother of Karima Babu (present applicant), brother of Razia, Javed, Vijay Aakhade and Chotu, entered the house of her sister, and that some of them were armed with Bamboos, Bats and Steel belt and they all were shouting 'maro-marro'. She has alleged that co-accused – Tambi is stated to have asked Saba, the niece of the complainant – Shabbo Shaikh '*Hamare khilaf police thane me jhuti complaint likhati hai kya? tum logo ko ham dikhate hai*' and started assaulting the persons who were present in the house. It is alleged by the complainant and Rashida (deceased) that Tambi assaulted Saba, with an iron belt on her head, due to which Saba sustained an injury on her head and was bleeding. It is alleged that at that time, the complainant - Shabbo Shaikh, Rashida (deceased), Saba, Karishma, daughter-in-law of Rashida, Sana, daughter of Rashida, who were present in the house of Rashida started shouting for help, due to which another

sister of the complainant, Shabnam Shaikh, son in law of Rashida, Jigrya @Ahmed Ansari and Aalam came to help them. It is alleged that Babu (present applicant), the brother of Karima assaulted Shabnam, who was pregnant, on her stomach with his legs and that the other accused assaulted Jigrya on his head by means of bamboo. The statement of the complaint – is corroborated by the statement of the victim - Rashida, who died subsequently due to 'cardiac arrest', pursuant to which Section 302 came to be added.

4. Learned Counsel for the Applicant contended that the applicant had not assaulted any person with any weapon and that the applicant has been wrongly framed in the said case, because of some previous enemical relations. He submitted that the injured - Shabnam Shaikh was discharged from the hospital and that no injury was caused to the unborn child.

5. Learned APP opposed the bail application. She submitted that the applicant was absconding from 27th October, 2014 till 6th /7th December, 2014, although he was named in the FIR. She submitted that the statement of the complainant and the witnesses clearly shows that all the

accused persons had entered the premises with a common object of assaulting the people in the house. She submitted that as a result of the assault caused by the present applicant on Shabnam Shaikh, who was pregnant, Shabnam, was admitted to the hospital for 12 days.

6. Perused the papers of investigation. It is evident from the statement that all the accused entered the premises with the common object of assaulting the persons present in the house and had given a call '*maro-marro*'. The statements are consistent with each other. The medical certificate of Shabnam Shaikh also corroborates the same. She has given history of assault by known person.

7. Considering the material on record and the fact that the applicant was absconding for about 1 ½ months, after the incident, the applicant is not entitled to be granted pre-arrest bail.

8. Hence, the Application for pre-arrest bail is rejected and disposed of as such.

9. It is made clear, that the observations made herein, are prima-facie,

for the purpose of deciding this application and the appropriate Court shall decide the Application for regular bail, if filed, on its own merits, in accordance with law, uninfluenced by the observations made in this order.

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

(REVATI MOHITE DERE, J.)