

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION No.1828 OF 2015

Yusufkhan Jamalkhan Pathan .Applicant

Vs.

The State of Maharashtra .Respondent

Mr.A.P.Mundargi, Sr.Counsel i/b. Mr.Kedar Patil,
for the Applicant

Smt.Veera Shinde, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 14.03.2016

P.C.

. Heard learned counsel for the Applicant
and the learned APP for the Respondent – State.

2. By this Application, the Applicant seeks
his enlargement on bail in connection with C.R.No.
169 of 2014 registered with the Sangli City Police
Station, District - Sangli, for the alleged
offences punishable under Sections 143, 145, 147,
148, 149 & 302 of the Indian Penal Code & under
Sections 3, 25 & 27 of the Arms Act.

3. The incident in question has taken place on 22.11.2014 at about 10.00 p.m., outside the house of accused No.1. The deceased is one Imran Aziz Mulla and the Complainant is Irfan Aziz Mulla. According to the Complainant, accused No.1 Mubin Pathan had given supari to Imran(deceased) to kill one Rafique Shaikh and had promised to pay him, a sum of Rs.50,000/-. He has stated that as Imran (deceased) was not paid the entire amount, he was demanding the said money. He has stated that accused No.1 Mubin Pathan had asked Imran(deceased) to come to his house to collect the money, pursuant to which they i.e. Imran and the Complainant went to his house. According to the Complainant, when they reached the house, accused No.1, his family members and the present Applicant were standing near the door. He has stated that accused No.1- Mubin Pathan pushed Imran(deceased), as a result of which he fell down and then the present Applicant assaulted the deceased with a koyta on his

forehead. It is alleged that thereafter, the accused assaulted the deceased with koyta, knife, stump, bat & stone.

4. Learned Senior counsel for the Applicant contended that the Complainant's story, that the accused No.1-Mubin had given supari to Imran is a self made and baseless story. He submitted that Imran(deceased) and the Complainant were both history sheeters and that no such supari was given by the accused No.1-Mubin to Imran (deceased). He submitted that with respect to the same incident, accused No.1-Mubin had also lodged a cross case on 23.11.2014, which was registered vide C.R.No.170 of 2014 with the Sangli Police Station, Sangli, alleging offences punishable under Sections 452, 457, 143 of the I.P.C.. He submitted that in the said complaint, it is stated that Imran(deceased) came and demanded money for the work done by his cousin and when the same was refused, the deceased

pulled out a knife and attempted to assault to accused No.1 Mubin Pathan. It is alleged that at that time, all the family members of Accused No.1 came forward and assaulted the deceased with koyta, bat, stump, stone and thereafter, fled from the spot. Learned Senior counsel for the Applicant submitted that although, the statement of one Salim Makbul Mujawar shows, that the Applicant was seen running with a koyta, the same was found on the spot, according to the spot panchanama.

5. Learned APP opposed the Bail Application. She submitted that the post mortem report, in particular, column 17 shows that the number of injuries sustained by the deceased, inasmuch as, there are 13 chop wounds. She submits that there is fracture of the skull and column 19 of the post mortem report shows the number of chop wounds which the deceased had sustained on his head. She submits that a specific overt act has been attributed to

the Applicant.

6. Perused the charge-sheet. The Applicant is alleged to have assaulted the deceased on his head alongwith accused No.1. The Applicant has been attributed with an overt act i.e. assault on deceased's head with koyta. It is informed that co-accused i.e. Accused No.1-Mubin Pathan's Bail Application has been rejected by this Court. The post mortem report shows the number of injuries sustained by the deceased.

7. Considering the material on record, this is not a fit case to enlarge the Applicant on bail. Accordingly, the Bail Application stands rejected. However, the trial is expedited.

8. It is made clear that the observations made herein 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.

(REVATI MOHITE DERE, J.)