

*Ladda*FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 194 OF 2016

Jaysen Arjun Panda	..	..Applicant.
Vs		
State of Maharashtra & Anr	..	Respondents.

Mr Rizwan Merchant i/by Priti Shukla for the applicant.
Ms S.S.Kaushik, APP for the State.

CORAM : A.S.GADKARI, J.
DATE : 3rd March, 2016

PC.

1) This is an application under section 439 of Cr.P.C. The applicant is seeking bail in CR No. 197/2015, dated 13/9/2015 registered with Wadala Police Station, Mumbai for the offences punishable under sections 143, 147, 148, 149, 307, 364, 504, 506, 120-B of IPC.

2) The First Information Report (FIR) is lodged by Mr Altaf @ Aftab Mahemood Khan. In the said FIR, the complainant has stated that when he was consuming liquor at Panchvati Bar & Restaurant on 12.9.2015 at about 8:30 p.m. one unknown person along with co-accused Arlu approached him and forcefully dragged him out of the said restaurant and abducted him from a taxi. When the complainant tried to resist the said act, the co-accused assaulted him with fists. At

that time, co-accused by name Arlu took out a sharp edged chopper which was concealed at his waist and inflicted it in the stomach of the complainant. When the taxi reached near Barkat Ali junction, the complainant raised shouts for help. At that time, the co-accused by name Sam Panda inflicted a blow with a aid of sharp edged chopper on the chest of the complainant. Thereafter, the said accused persons forcefully took the complainant in the lane where the present applicant was present. The complainant has stated that the present applicant thereafter questioned the complainant that 'how he dared to assault the applicant' and thereafter the applicant with the aid of stone hit on both the knees and on left shoulder of the complainant. At that time, the co-accused Sam assaulted the complainant on his right hand finger. The complainant has further stated that co-accused Arlu thereafter inflicted blow with chopper on the knees of the complainant. When the complainant raised shouts for help, the persons from the nearby vicinity gathered there. The applicant and other co-accused persons thereafter ran away from the place. In the premise, the FIR is lodged.

3) Heard the learned counsel for the applicant and the learned APP for the State. With their able assistance, I have perused the charge-sheet and the documents annexed to the application.

4) The learned counsel for the applicant submitted that as a

matter of record, the applicant herein had lodged FIR bearing No. 311/2015 dated 2.9.2015 for the offences punishable under sections 326, 427 read with 34 of the IPC against the complainant herein i.e. in CR No.197/2015. The applicant in his FIR has stated that on 1.9.2015 at about 11:00 p.m. i.e. the complainant in CR No. 197/2015 namely Altaf @ Aftab and other accused persons were abusing a lady in the Antop Hill area and when the applicant herein tried to intervene and pacify, the complainant in the present crime, he and his associates assaulted the applicant herein with chopper on his head. He further submitted that when the applicant herein lodged the FIR, the police from Antop Hill Police Station applied under section 326 and did not apply Section 307 of the IPC to the said crime and, therefore, he made representation / complaint dated 8.9.2015 with the Senior Inspector of Police, Antop Hill Police Station about the same and sent copy of the said complaint to the Asstt. Commissioner of Police and Deputy Commissioner of Police of said Zone. He submitted that as counter blast to the said FIR bearing No. 311/2015 registered with Antop Hill Police Station the accused therein has lodged the present crime bearing CR No. 197/2015 with the Wadala Police Station on 12.9.2015. He further submitted that the medical certificate issued by the KEM Hospital does not support the contention of the complainant as the nature of injuries

mentioned in the said certificate are abrasion and laceration. He, therefore, prayed that the applicant may be released on bail. Per contra, the learned APP vehemently opposed the present application. However, she conceded to the fact that there are no antecedents at the discredit of the applicant.

5) The record discloses that the applicant herein has lodged the FIR bearing No.311/2015 with Antop Hill Police Station on 2.9.2015 against Altaf @ Aftab and two other persons for the offence under section 326 and other related sections. It is also a fact that the applicant thereafter made a complaint/representation with the Senior Inspector of the Police of Antop Hill Police Station on 8.9.2015 for adding section 307 of the IPC to C.R.No.311/2015 and a copy of the same was sent to the office of the ACP, Sion Division. The FIR lodged by Altaf @ Aftab in the present crime mentions that the applicant along with other accused persons assaulted him and there is use of two choppers and stones in the present crime. The complainant has categorically stated that other two co-accused persons inflicted blows with chopper on his stomach and chest. That the applicant hit him with stone on his knees. That the co-accused namely Arlu also inflicted blows with the chopper on his right knee and because of the same, the complainant suffered various serious injuries. The medical certificate of the complainant Altaf @ Aftab

Khan issued by KEM Hospital mentions about only two injuries namely one abrasion on the chest and one laceration on the abdomen.

6) The medical certificate issued by the KEM Hospital does not corroborate with the version given by the complainant in his FIR in the present crime. It appears that the complainant Altaf @ Aftab Khan has given exaggerated version of the incident to the police. It further appears that there is substance in the contention of the learned counsel for the applicant that the present crime is lodged by the said Mr Altaf Aftab Khan as a counter blast to the crime registered by the present applicant against him bearing CR No.311/2015 with the Antop Hill Police Station. There are no antecedents at the discredit of the applicant. In view of the above, the applicant has made out a case for his release on bail.

7) Hence, the following order :

ORDER:-

(a) The applicant shall be released on bail in CR No. 197/2015 registered with Wadala Police Station, Mumbai on his furnishing a P.R. bond of Rs.25,000/- with one or two solvent local sureties in the like amount;

(b) After release from jail, the applicant shall attend the Wadala Police Station on every first Monday of the month between 10:00 a.m. to 12:00 noon till

conclusion of the trial;

(c) The applicant shall not tamper with the evidence and/or influence the witnesses;

The application is allowed in the aforesaid terms.

(A.S. GADKARI, J.)