

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2271 OF 2015
with
CRIMINAL APPLICATION NO.1074 OF 2015

Basre Alam Mohd. Islam Shaikh	... Applicant
Vs.	
The State of Maharashtra & anr.	... Respondents
And	
Ehtesham Abdul Kalam Shaikh	... Intervener

Mr.S.R. Pasbole i/b Rahul Arote for the Applicant
Ms.Rutuja Ambekar, APP, for Respondent – State
Mr.S.A. Shaikh for Intervener

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **APRIL 7, 2016**

P.C.:

1. The applicant-accused has moved this application for bail as he is being prosecuted for the offences punishable under sections 307, 326, 341, 323 r/w section 34 of the Indian Penal Code registered at C.R. No.I-79 of 2015 at Shantinagar police station, Bhiwandi. One Ehtesham Abdul Kalam Shaikh gave complaint against the applicant-accused and the co-accused. The complainant is having a business of cable internet. His friend Fakhruddin @ Papa Mehmood Khan gave a complaint against two persons Wasim Ahmed Mohammed Gali Shaikh and Mukesh Patel and so the offence was registered under sections 420, 406, 465, 471 r/w section 34 of the Indian Penal Code against said Wasim Ahmed Mohammed Gali Shaikh and Mukesh Patel. They were to be produced for police custody

before the Court. At that time, Ehtesham Shaikh alongwith Fakhruddin was present at Bhiwandi Court. They both came out and sat in the car and at that time, the applicant-accused Basre Alam, co-accused Danish pulled him out and Danish mounted assaulted on his neck and Basre gave blow on his back. However, the other persons intervened and the applicant-accused was apprehended on the spot i.e., on 10.3.2015. Hence, this bail application.

2. The learned Counsel for the Applicant has submitted that the applicant-accused was beaten up there on that day and a complaint is registered against the applicant and other persons. He submitted that the knife is not recovered from the applicant-accused. He submitted that the injury caused by the applicant-accused is simple in nature and it was on the back. Considering all this, he submitted that the applicant-accused be bailed out and he shall abide by any terms and conditions of this Court, if released on bail.

3. Both the learned Prosecutor and the learned Counsel for the Intervener have opposed the bail application. It was argued that the applicant-accused caught red handed on the spot. He was earlier involved in criminal cases under section 302 though he is acquitted from the said case. It is further submitted that the applicant-accused is having enmity with the complainant and he is likely to pressurise the complainant

and the other witnesses, if he is bailed out. Learned Prosecutor relied on the medical certificate of the complainant.

4. The evidence before the Court discloses that the applicant-accused was the assailant and has inflicted blow with knife on the back i.e., on the lumbar portion of the complainant, however, the injury is simple. The grievous injury on the neck is caused by co-accused Danish, who is absconding. On query, it is informed that no criminal case is pending against the applicant-accused and he has been in the jail since last one year. It appears that the trial is not likely to start in near future. Hence, I am inclined to grant bail on the following terms and conditions:

- i) The applicant-accused shall be released on bail upon furnishing P.R. Bond in the sum of Rs.50,000/- with one or two solvent sureties in the like amount;
- ii) The applicant-accused shall stay out of the Mumbra Taluka jurisdiction for a period of six months i.e., upto 30th September, 2016 except for attending the Court dates;
- iii) The applicant-accused shall not tamper with the evidence or pressurise the complainant;
- iv) The applicant-accused shall not indulge into any criminal activity and shall attend on all the Court dates;

v) The applicant-accused shall not abscond or leave India without prior permission of the Court and furnish his permanent address to the Investigating Officer alongwith documentary proof of his address.

vi) In the event of breach of any of the above conditions, the prosecution will be at liberty to move the Court for cancellation of bail.

5. Bail application is disposed of on the above terms.

6. In view of the above, the Criminal Application for intervention also stands disposed of.

(MRIDULA BHATKAR, J.)