

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1154 OF 2017

Shoeb alias Bebo Johar Ahmed Ansari	...	Applicant
Vs.		
The State of Maharashtra	...	Respondents

Mr. Harshad Sathe i/b Mr. Vijaykumar R. Garad for the Applicant.
Mr. S.H.Yadav, APP, for the State.

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 27th July, 2017.

P.C.

This is a subsequent Bail Application under Section 439 of the Criminal Procedure Code. The application filed by the present applicant was withdrawn on 16.3.2017. The application was dismissed as withdrawn. This Court had directed the Sessions Court to make an endeavour to expedite the trial. It is submitted that till today, the charge is not framed and it is in these circumstances that the present application is being considered afresh.

2. The applicant herein was arrested on 19.3.2016 in Crime No.71 of 2016 registered at Deonar Police Station, Mumbai for the offences punishable under Sections 307, 324, 341, 323, 143, 147, 148, 149, 504 read with Section 34 of the Indian Penal and Section 4 read with Section 27 of the Indian Arms Act and under Sections 37(i) and 135 of the Bombay Police Act.

3. It is the case of the prosecution that on 18.3.2016, Shahanawaz @ Shanu Shaikh lodged a report at the Police Station alleging therein that on 17.3.2016, the accused No.2 Kallu @ Gaurav had threatened the complainant's friend i.e. Irfan Shaha at Govandi. That on 18.3.2016, the complainant along with his friend Irfan were going towards Govandi Station in his rickshaw. That when they reached near Vikas Bar, the accused No.2 had apprehended the complainant and stopped his auto-rickshaw. The rest of the accused, including the present applicant, reached the spot in no time and that the present applicant had assaulted the complainant with a sword and had attempted to commit his murder. On the basis of the said report, Crime No.71 of 2016 was registered.

4. The co-accused have been enlarged on bail by the orders of this Court as well as the Sessions Court.

5. Perused the Injury Certificate of Shahnawaz Shaikh. The Injury Certificate indicates that Shahnawaz was examined at the Corporation Hospital at Sion Mumbai on 18.3.2016 at about 1.45 p.m. He was taken to the hospital by his brother Rizwan. There is one sutured contused lacerated wound on the right parietal region which is described as a simple injury. A Linear abrasion on the back which is simple in nature. Prima facie, it appears that the injuries are attributed to the present

applicant.

6. The learned counsel for the applicant has drawn attention of this Court to the Injury Certificate, wherein it appears that initially the injury was described as a simple injury and thereafter the word “grievous” has been mentioned showing that it is partially depressed. The same is the case with the injury No.2. The learned Counsel for the applicant vehemently submits that the injuries were simple in nature and subsequently they have been shown as grievous injuries. It is further submitted that upon taking into consideration the nature of injuries, it cannot be said that the applicant herein had attempted to commit murder of the complainant and, therefore, according to the learned counsel, the offence under Section 307 of IPC is not attracted. It is also submitted that the investigation is completed and charge-sheet is filed. Therefore, there is no question of tampering with the evidence. Moreover, the applicant has been in custody for more than one year and hence he is entitled to be enlarged on bail.

7. The learned counsel for the applicant has also drawn attention of this Court to the order passed by Hon'ble Justice B.R.Gavai dated 1.6.2016 by which the co-accused Altamash Qureshi was enlarged on bail. Similarly, the co-accused Sameer Firoz Shaikh @ Badda was enlarged on

bail by this Court (Coram: Smt. Sadhana S.Jadhav, J.) by an order dated 13.1.2017. In view of this, by virtue of doctrine of parity, the applicant also deserves to be enlarged on bail.

8. There appears to be cross cases. Crime No.72 of 2016 is also registered on the basis of the statement of Altamash Qureshi who is an accused in C.R. No.71 of 2016.

9. The observations made hereinabove are restricted to an application under Section 439 of Cr.P.C. and the same shall not be taken into consideration for the purpose of quashing of FIR, discharge application or at the time of trial.

ORDER

- (i) The application is allowed.
- (ii) The applicant be enlarged on bail on his furnishing P.R. Bond in the sum of Rs.25,000/- with one or more local solvent sureties.
- (iii) The applicant shall furnish his permanent address, cellphone number and other details to the police upon being enlarged on bail.
- (iv) The applicant shall report to the concerned police station on first Sunday of each month till the framing of charge.

The Application stands disposed of.

(SMT. SADHANA S.JADHAV, J.)