

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1402 OF 2017**

Chand @ Chand Ali Khan

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Prakash L. Shetty for the Applicant

Ms. Anamika Malhotra, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.
WEDNESDAY, 27th SEPTEMBER, 2017

P.C. :

1. Heard learned Counsel for the parties.
2. By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 518 of 2016 registered with the Shivaji Nagar Police Station, Mumbai, for the alleged offences punishable under Sections 302, 307, 143, 144, 147, 148, 149, 34 of the Indian Penal Code and Section 37(1)(a) and 135 of the Bombay Police Act.
3. Learned Counsel for the applicant submits that the FIR has been lodged by Imran Alam Khan as against two named persons i.e. Khaliullah Mohammed Shabbir Qureshi @ Chinka @ Chintya and

Mohammed Imtiyaz @ Monu Mohammed Irshad Shaikh and four unknown persons. He submits that admittedly, no identification parade has been held and as such, the said unknown persons could not be identified. He further submits that even otherwise, the applicant is not alleged to have assaulted the deceased-Mohammed Kandi. He submits that according to the complainant/injured-Imran Khan, one of the four unknown persons assaulted him with a bamboo stick on his head. He submits that there is nothing to show, who had assaulted the complainant/injured with a bamboo stick, in the absence of an identification parade. He further submits that even the injury certificate of the complainant/injured shows that he had sustained only one injury i.e. an incised wound caused by sword and no injury caused by a bamboo stick. He submits that it is Monu who is alleged to have assaulted the complainant/injured with a sword. He submits that the applicant has no antecedents and that investigation is complete and charge-sheet is filed.

4. Learned A.P.P opposes the application. She, however, does not dispute the fact that investigation is complete.

5. Perused the papers. The incident has taken place on 14th December, 2016 at about 1:30 p.m. According to the complainant/injured-Imran Khan, Chinka @ Shabbir Qureshi and Monu and four unknown persons came on two motorcycles. He has alleged that Chinka @ Shabbir Qureshi had a sword in his hand and Monu was armed with a chopper and that out of the said four persons, one was armed with a sword and the others with wooden bamboo sticks. He has further stated that Chinka @ Shabbir Qureshi, questioned Mohammed Kandi (deceased) as to whether he had relations with his wife and slapped him. It is alleged that at that time, one unknown person gave a blow with a bamboo stick on the complainant's head, from behind and co-accused Monu assaulted him with chopper on his left shoulder. He has stated that soon thereafter, Chinka assaulted Mohammed Kandi with a sword. He has further stated that thereafter, all the accused fled from the spot. The injury certificate of the complainant/injured shows that he had sustained one incised wound on the shoulder, with a chopper. The said injury is alleged to have been caused by co-accused Monu. As far as deceased-Mohammed Kandi is concerned, except Chinka @ Shabbir Qureshi, none of the other accused have

assaulted him. The applicant has no antecedents. Investigation is complete and charge-sheet is filed.

6. Considering the aforesaid, the application is allowed and the applicant is enlarged on bail on the following terms and conditions :

ORDER

- (i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 25,000/- with one or two sureties in the like amount;
- (ii) The applicant shall attend the concerned Police Station on the first Saturday of every month between 10:00 a.m. to 12:00 noon, till the conclusion of the trial;
- (iii) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;
- (iv) The applicant shall inform his latest place of residence and mobile contact number and/or change of residence or mobile details,

if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(v) The applicant to cooperate with the conduct of the trial;

(vi) The applicant shall file an undertaking in the trial Court with regard to clauses (ii) to (v), within two weeks of his release;

(vii) If there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

7. The application is accordingly disposed of.

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.

9. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.