

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

CRIMINAL BAIL APPLICATION NO.428 OF 2017

Javed Nasrullha Khan

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Ayaz Khan for the applicant.

Smt. J. S. Lohokare, APP for the respondent – State.

PSI B. D. Gavand, V. B. Nagar Police Station present.

CORAM : PRAKASH D. NAIK, J.

DATE : 11 JULY, 2017

P.C. :

1. The applicant seeks bail in connection with C.R. No.235 of 2016 registered with V.B. Nagar Police Station, Mumbai for offence punishable under sections 307, 506 read with 34 of IPC.

2. The prosecution case is that the injured Ashfaq Khan is the brother of the complainant Sirajuddin Khan. It is alleged that Rashid assaulted injured by knife and his associates assaulted him by hockey sticks. The incident had occurred on account of the previous quarrel. Ashfaq Khan suffered about five injuries on his person. Considering the nature of the injuries charge under section 307 of IPC was framed.

3. Learned advocate for the applicant submitted that the name of the applicant is not reflected in the FIR. The statement of the victim was recorded on 13th October, 2016 in which the applicant's name is referred to as a person who had assaulted by hockey stick. The statement of the complainant was also recorded subsequently on 23rd October, 2016. In that statement the name of the applicant has been referred to as one of the assailant. Learned advocate further submitted that in the medical certificate it is stated that the injuries sustained by the victim were by sharp weapon. The applicant is in custody since 17th October, 2016. He further submitted that there are no antecedents against the applicant.

4. Learned APP opposed the application for bail. She submitted that the applicant acted in furtherance of common intention and his presence is reflected in the statement of the witnesses.

5. On going through the chargesheet which includes the statement of witnesses and medical certificate, it is apparent that the applicant involvement was reflected for the first time in the statement dated 13th October, 2016. The complainant who is the brother of the victim had not referred to name of the applicant. However, it was stated by him that alongwith the co-accused Rashid, other unknown

persons had assaulted the injured. There is no identification parade conducted qua the complainant. On perusal of the medical certificate, it is apparent that the injuries sustained by the victim were on account of sharp weapon. The applicant has allegedly used hockey stick. The medical evidence is contrary to the statement of witness. The applicant is in custody for a long time, chargesheet has been filed on completing the investigation. There are no criminal antecedents. This fact is confirmed by investigating officer by submitting the report in that regard.

6. Considering the aforesaid circumstances, bail can be granted to the applicant.

:: ORDER ::

- (i) Bail Application No.428 of 2017 is allowed.
- (ii) The applicant Javed Nasrullha Khan is directed to be released on bail on furnishing P.R. Bond in the sum of Rs.30,000/- (Rupees Thirty Thousand only.) with one or more sureties in the like amount.
- (iii) The applicant is directed to report V.B. Nagar Police Station,

Mumbai once in a month on the first Saturday of the month
between 11.00 am to 1.00 pm.

(iv) The applicant should not tamper with the prosecution
witnesses / evidence.

(v) Application stands disposed of.

[PRAKASH D. NAIK, J.]