

Anand

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

BAIL APPLICATION NO.445 OF 2017

Rashid Shakil Choudhary .Applicant

Vs.

The State of Maharashtra & anr. .Respondents

Mr.A.Khan i/b Ms Anjali Awasthi, Advocate, for the Applicant
Ms Veera Shinde, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 18.08.2017

P.C.

. Heard learned counsel for the parties.

2. By this Application, the Applicant seeks his enlargement on bail in connection with FIR No.235 of 2016 registered with the Vinoba Bhawe Nagar Police Station, Kurla(W), Mumbai, for the alleged offences punishable under Sections 307, 506 r/w 34 of the Indian Penal Code.

3. Learned counsel for the Applicant submits that the victim – Ashfaq Khan has only sustained one grievous injury and that the rest of the injuries are simple in nature. He submits that co-accused – Javed

Khan has been enlarged on bail by this Court (Coram : Prakash D. Naik, J.) vide Order dated 11.07.202017 and as such, seeks bail on the ground of parity. He further submits that investigation is complete and charge-sheet is filed and hence, further custody of the Applicant is not warranted.

4. Learned APP opposes the Application.

5. Perused the papers. According to the prosecution, the incident took place on 09.10.2016 at about 11.30 p.m.. It is alleged that the Applicant had a fight with one Sirajuddin Khan (injured – Ashfaq Khan's brother). It is alleged that Sirajuddin Khan and Ashfaq Khan came to the spot and pacified the Applicant. Thereafter, on 10.10.2016 at about 9.00 a.m., Ashfaq was assaulted by the Applicant with a knife on his head, abdomen, back etc. Pursuant thereto, Ashfaq informed his brother – Sirajuddin, who lodged the aforesaid complaint as against the Applicant and two others. The Applicant is alleged to have assaulted Ashfaq with a knife. The Injury Certificate of Ashfaq shows that he has sustained five incised injuries i. e. on his face, left subcostal region over artificial axillary line, left middamicular line just below costal margin, left scapula superior border and left infrascapular region. According to

an eye witness i. e. Mohammed Akil alias Guddu Khan, the Applicant assaulted the deceased with a knife and the other accused with hockey sticks. He has stated that as he was afraid, he did not go forward. He has further stated that because of the terror and the act of assault, none of the witnesses came forward. As far as co-accused – Javed Khan is concerned, he was enlarged on bail by this Court (Coram : Prakash D. Naik, J.) vide Order dated 11.07.202017. The role of the Applicant is clearly distinguishable from that of co-accused – Javed Khan. The Medical Certificate of Ashfaq shows that the injuries sustained by Ashfaq were by a sharp weapon and not by hockey stick. The possibility of the Applicant tampering the witnesses also cannot be ruled out, in the peculiar facts of this case.

6. Considering the aforesaid, this is not a fit case to enlarge the Applicant on bail. Hence, the Application stands rejected.

7. 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.

(REVATI MOHITE DERE, J.)