

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

CRIMINAL BAIL APPLICATION NO. 385 OF 2016

Wasim Ahmed Bashir Ahmed Shaikh.	... Applicant.
Versus	
The State of Maharashtra.	... Respondent.

Mr. Sachin Chandan a/w. Mr. Vidur Dhawan i/b. Mr. Kamlesh More,
advocate for applicant.

Mr. R.M. Pethe, APP for State.

Mr. Chavan, PSI, Deonar Police Station.

**CORAM : SMT. SADHANA S. JADHAV, J
DATE : MARCH 9, 2017**

P.C.:

1 Heard the learned Counsel for the applicant and the learned
APP for State. Perused papers.

2 This is an application under section 438 of the Code of Criminal
Procedure, 1973. The applicant herein is arrested on 21/7/2015 in
Crime No. 190 of 2015 registered at Deonar Police Station. The

investigation is completed and charge-sheet is filed under section 307, 324, 504 read with section 34 of the Indian Penal Code read with section 4 and 25 of the Arms Act.

3 It is the case of the prosecution that the applicant and the complainant Nasim Banu Rais Shaikh lived in close proximity. That on 19/7/2015 at about 11.30 p.m. Rashid alongwith 3 other associates had come to her house. There was a drum filled with water kept near the door step of the complainant. That the said person had dipped their hands in the said drum. Her husband had objected to the said act as it was drinking water. There was an altercation between her husband and Rashid on the other side. That after some time, Rashid had revisited the house of the complainant alongwith his associates and had assaulted the family members with deadly weapons. That according to the complainant, while fleeing from the spot Rashid had threatened the complainant and her family members of dire consequences. Report was lodged at the police station, on the basis of which Crime No. 190/15 was registered.

4 The learned Counsel for the applicant submits that the applicant is not an assailant and had not assaulted anybody. The main role is attributed to Yasin. As far as the present applicant is concerned, his name is mentioned in the FIR but the description given does not pertain to the present applicant. It is submitted that no test identification parade is conducted. It is further submitted that the witnesses were called to the police station and they were shown arrested accused whom they have identified as the same person who had assaulted the complainant and her family members.

5 Upon perusal of the injury certificate, it is seen that the injured Rais has sustained four simple injuries and 3 grievous injuries attributed to blunt weapon. Other injured persons had only sustained some minor abrasions.

6 Be that as it may, the learned APP upon instructions submits that the applicant has no criminal antecedents. That he has been in

custody since 21/7/2015. Investigation is completed and charge-sheet is filed and the applicant is in jail for more than 19 months. The applicant deserves to be enlarged on bail.

7 The observations are prima facie and restricted to the application under section 439 of the Code of Criminal Procedure, 1973 and the same shall not be taken into consideration at the time of trial.

8 Hence, following order is passed :

ORDER

(i) The application is allowed.

(ii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- and one or more local solvent sureties in the like amount.

(iii) The applicant shall report to the concerned police Station on 1st and 3rd Sunday of each month till framing of charge and thereafter, attend all the stipulated dates at the time of trial. Upon failure to attend any consecutive two dates either before the police or before the Court, the prosecution is at liberty to file an application under section 439(2) of the Code of Criminal Procedure, 1973.

(iv) The applicant shall not tamper with the evidence.

9 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV, J)