

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

BAIL APPLICATION NO. 1092 OF 2017

Abutulha Aval Baig Alias Tula Baig	.. Applicant
Vs.	
The State of Maharashtra	.. Respondent

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Mr.Girish Kulkarni i/b. Mr.M.D. Pareek, Advocate for the Applicant.
Mrs.Veera Shinde, APP for the Respondent – State.
Mr.Shailesh Kantharia, Advocate for the Intervener.
PI Sudhir Dalvi, Kandivali Police Station, present.

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CORAM : PRAKASH D. NAIK, J.

DATED : JULY 5, 2017.

P.C. :

This is an application for bail. The applicant is arrested on 4th January, 2017 in connection with C.R. No.3 of 2017, registered with Dindoshi Police Station which was subsequently transferred to Kandivali Police Station. The offences were registered under Section 452, 326, 307 read with 149, 143, 144, 147 and 148 of the IPC.

2 It is the prosecution case that complainant Imran Mansuri and the injured Shehnaz were in their house at Aarey

Bhaskar Road. Shehnaz came out of the house in the garden at that time the complainant heard shouts of Shehnaz. He noticed that some persons were assaulting her by iron rod, chopper etc. He saw the applicant, his son Akhtar and nephew Simab Baig assaulting the injured person. The complainant tried to intervene, but, he was also assaulted by the accused. It is stated that along with the three accused there were about 7 to 8 more persons who all had participated in that assault. Complainant and the injured sustained injuries which are grievous and simple in nature.

3 The co-accused Akhtar and Simab preferred an application for bail before the Sessions Court and they have been granted bail. The application preferred by the applicant, was however, rejected.

4 Learned advocate for the applicant submitted that the applicant is in custody since 4th January, 2017. Investigation is completed and charge-sheet has been filed. The applicant has been falsely implicated in the said crime. He submitted that the offence under Section 307 is not made out. He further submitted that there is no specific overt-act attributed to the assailant. It is submitted that the accused who were allegedly armed with the

chopper and the iron rod have been granted bail by the Sessions Court. It is submitted that since the investigation is completed, further detention of the applicant is not necessary.

5 Learned APP opposed the application for bail. She submitted that the applicant had played a major role in the crime. The applicant was a person armed with iron rod. The complainant and the other injured sustained serious injuries. One case is registered against the accused-applicant in the year 2004. Therefore, the applicant is not entitled for bail.

6 Learned advocate for the complainant supported the submissions advanced by the learned APP. In addition to that he submitted that the accused who has been granted bail had threatened the injured person Shehnaz and FIR has been registered against the said accused. He submitted that the applicant has played a vital role in the said crime and the offence under Section 307 is made out against the applicant, considering the nature of injuries sustained by the injured person. He submitted that on account of breach of condition of bail granted to co-accused, the complainant had filed an application for cancellation of bail which is pending.

7 Perused the documents on record. In the FIR it is alleged that about 11 persons assaulted the complainant and the injured. The complainant has not attributed a specific overt-act to the assailants. However, it is mentioned that the applicant was armed with iron rod and the others were armed with iron rod and chopper. All of them had allegedly assaulted. The co-accused have been granted bail by the sessions Court. The person who was allegedly armed with chopper is directed to be released on bail. There is no recovery of any weapon from the applicant although he was in custody from 4th January, 2017. The charge-sheet has been filed for the offences punishable under Section 306 of IPC, on completing the investigation. The alleged incident had occurred on account of property dispute. The trial will not commence immediately. The further detention of the applicant is not required. In the aforesaid circumstances, bail can be granted to the applicant on certain conditions.

9 Hence, I pass the following order:

:: ORDER ::

- (i) Bail application No.1092 of 2017 is allowed;

- (ii) The applicant is directed to released on bail in connection with C.R. No.3 of 2017, registered with Dindoshi Police Station which was subsequently transferred to Kandivali Police Station, on furnishing P.R. Bond in the sum of Rs.50,000/- (Rupees Fifty Thousand) with one or more sureties in the like amount;
- (iii) The applicant is directed to report Kandivli Police Station, once in a week on every Saturday between 11.00 a.m. to 1.00 p.m., till further orders;
- (iv) The applicant shall not tamper with the prosecution evidence;
- (v) Till further orders the applicant is directed not to visit the place of incident;
- (vi) Bail Application is disposed of accordingly;

- (vii) The observations made in this order are only for considering the present application and the trial Court or any other Court should not be influenced by the same.

(PRAKASH D. NAIK, J.)