

Anand

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

BAIL APPLICATION NO.1874 OF 2017

Sarfaraz Sharif Mulla

.Applicant

Vs.

The State of Maharashtra

.Respondent

Mr.A.Yende i/b. Mr.S.Nimbalkar & Mr.S.Parekh, Advocate, for the
Applicant

Mr.A.S.Patil, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 28.08.2017

P.C.

. Heard learned counsel for the parties.

2. By this Application, the Applicant seeks his enlargement on bail in connection with C.R.No.I-57 of 2014 registered with the Wadala Police Station, Mumbai, for the alleged offences punishable under Sections 302, 143, 145, 148, 149, 341, 342, 323 & 120B of the Indian Penal Code.

3. Learned counsel for the Applicant submits that the only allegation qua the Applicant is that he held the deceased – Imran's

hands. He submits that no overt act of assault by any weapon has been attributed to the Applicant either by the Complainant or by any witness. He further submits that there is no recovery of any weapon or clothes at the instance of the Applicant. He further submits that the Applicant has no antecedents.

4. Learned APP does not dispute the fact, that apart from the statement of the Complainant alleging that the Applicant held the hands of the deceased – Imran, none of the eye witnesses have stated that the Applicant assaulted the deceased with any weapon. He does not dispute the fact, that the Applicant has no antecedents.

5. Perused the papers. The incident has taken place on 22.03.2014 at about 11.30 p.m., when the Complainant and his friend – Abdul had gone to the darga. According to the Complainant – Jabbar Pathan, Juned Ali told him that Salim, Yusuf and Aslam were sitting near the steps and were likely to pick up a quarrel and asked him to come to help. According to the Complainant, when they reached the spot, Salim, Yusuf, Aslam, Rahim, Hamid, the Applicant and two unknown persons saw Imran and started shouting “kill him”. It is alleged that the Applicant held Imran and all the other co-accused also

surrounded him. It is alleged that thereafter, Rahim, Hamid, Salim assaulted Imran (deceased) with knives and other co-accused gave fist and kick blows. The Applicant is not alleged to have assaulted the deceased either by any weapon or by fist and kick blows. The statements of eye witnesses also show that other co-accused assaulted the deceased with hands. There is no motive alleged as against the Applicant. Neither is there any recovery of any weapon at the instance of the Applicant. The Applicant has no antecedents. Investigation is complete and charge-sheet is filed.

6. Considering the role of the Applicant, the Application is allowed and the Applicant is enlarged on bail on the following terms & conditions:-

ORDER

(i) The Applicant be enlarged on bail, on executing PR Bond in the sum of **Rs.50,000/-** with one or two local solvent sureties in the like amount;

(ii) The Applicant shall report to the investigating officer of the concerned police station on the **first Saturday of every month** between **10.00 a.m. to 11.00 a.m.** 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 immediately after being released 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 in the conduct of the trial;

(vi) The Applicant shall file an undertaking with regard to Clauses (ii) to (v) in the trial Court within one week 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 allowed in the aforesaid terms and 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.

Parties to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)