

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2248 OF 2017

Liyakat Harun Shaikh @ Babu Chindhi ... **Applicant**

V/s.

The State of Maharashtra ... **Respondent**

WITH

CRIMINAL APPLICATION NO.955 OF 2017

IN

BAIL APPLICATION NO.2248 OF 2017

Nazim Abdul Gafur Shaikh ... **Applicant/Intervenor**

In the Matter in Between :

Liyakat Harun Shaikh @ Babu Chindhi ... **Applicant**

V/s.

The State of Maharashtra ... **Respondent**

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Mr.Athar Pavaskar i/b. Noman A.Jafri , Advocate for the Applicant.

Mr.P.R.Yadav, Advocate for the Intervenor in APPP/955/2017.

Ms.Anamika Malhotra, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 2nd NOVEMBER 2017.

P.C. :

1 The applicant/accused in Crime No.I-299 of 2017 registered with Police Station, Mumbra, Mumbai for offences

punishable under Sections 307, 506 and 120-B read with Section 34 of the Indian Penal Code at the instance of Nazim Abdul Gafur Shaikh, by this application, is seeking his release on bail.

2 Heard the learned Advocate appearing for the applicant/accused. He argued that the entire dispute is in respect of ancestral property and particularly, a shop in which all members of the family are having their share. The applicant is falsely implicated in the crime in question.

3 The learned Additional Public Prosecutor opposed the application by contending that the dispute over the ancestral property formed a motive for the applicant to hatch the conspiracy and in pursuant to that conspiracy injured Nazim was brutally assaulted.

4 I have also heard the learned Advocate appearing for the First Informant. He argued that First Informant had suffered in all 114 injures in the assault and the applicant is having criminal antecedents.

5 I have carefully considered the rival submissions and also perused the entire case diary. The case diary contains a Medico-Legal Certificate in respect of injured Nazim Abul Gafur Shaikh issued by the Civil Hospital, Thane. The Medico-Legal

Certificate shows that injured Nazim had suffered in all six incised wounds. It is not disputed by the parties that as of now injured Nazim Abdul Gafur Shaikh is discharged from the hospital.

6 The learned Additional Public Prosecutor fairly accepted the fact that the evidence against the present applicant is only that of the FIR against him lodged by injured Nazim. The FIR lodged by Nazim shows that he was repeatedly asking for possession of the shop from present applicant Liyakat Harun Shaikh @ Babu Chindhi, who is his uncle. But Liyakat Shaikh was not giving possession of the shop. The incident took place on 03/08/2017. According to the First Informant, after meeting his sister, when he was returning to his home at about 11.15 p.m., two persons who came on a motorcycle accosted him. Both assailants had masked their faces. When he was talking with them, somebody from behind assaulted him by means of sharp edged weapon. Another persons then gave blow of sharp edged weapon on his back as well as arm.

7 The FIR contains averments to the effect that assailants extended threat to him of dire consequences by stating that he was already informed to keep himself away from the shop as well as Babu Bhai.

8 Taking clue from this statement, the learned Additional

Public Prosecutor argued that this threat of the assailant reflects that the assailant was stage managed by the present applicant Liyakat Shaikh, who was in possession of the shop. This aspect will be dealt with in the trial. Suffice to mention that the investigation is virtually over and the injured is also discharged from the hospital. In this view of the matter, further pre-trial detention of the present applicant is not warranted. His criminal antecedents, if any, can be taken care of by imposing stringent conditions on the applicant. Hence, the Order :

- (i) The application is allowed.
- (ii) The applicant/accused in Crime No.I-299 of 2012 registered with Police Station, Mumbra, Mumbai for offences punishable under Sections 307, 506 and 120-B read with Section 34 of the Indian Penal Code be released on bail on his executing P.R.Bond in the sum of Rs.15,000/- and on furnishing surety in the like amount.
- (iii) The applicant shall not tamper with the prosecution evidence.
- (iv) The applicant / accused shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade

him from disclosing such facts to the court or to the Police Officer.

(v) The applicant should not contact the injured Nazim Abdul Gafur Shaikh or his family members in any manner.

(vi) The applicant should not commit any offence while enjoying liberty in pursuant to this Order.

9 In view of disposal of Bail Application bearing No.2248 of 2017, Intervention Application therein bearing No.955 of 2017 stands disposed of.

(A.M.BADAR J.)