

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1213 OF 2019**

Irfan Sattar Khan @ Monu

...Applicant

Versus

State of Maharashtra

...Respondent

Mr. Arjun K. Rajput I/b Ms. Anjali Patil for the Applicant

Ms. P. P. Shinde, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.
MONDAY, 29th JULY 2019

P.C. :

1 Heard learned counsel for the parties.

2 By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 746 of 2017 registered with the Sakinaka Police Station, Mumbai, for the alleged offences punishable under Sections 302, 324, 323, 504 r/w 34 of the Indian Penal Code.

3 Learned counsel for the applicant has tendered an affidavit of the applicant, stating why the identification papers were not annexed to the bail application. From the said affidavit, it appears that the identification parade was held in January 2019 and hence, the said identification parade

papers were filed in the supplementary charge-sheet. The said fact is not disputed by the learned A.P.P. Explanation accepted. The said affidavit is taken on record.

4 Perused the papers. According to the prosecution, the FIR/complaint was lodged by Akshay Pego @ Tony on 15th December 2017 (now co-accused in the said case) alleging that the incident took place on 15th December 2017 at 12:45 a.m. According to the complainant, four unknown persons came to the spot, abused Siraj and thereafter assaulted him with fist and kick blows. It is also alleged that the said accused thereafter assaulted him (complainant) with a cement block as well as Siraj with a cement block and after assaulting, fled from the said spot. The complainant gave the description of the said four persons and accordingly an FIR was lodged as against four unknown persons.

5 During the course of investigation, it transpired that the complainant himself was an accused and has assaulted Siraj. The statement of Khushali Patil was recorded on 10th February 2018 in which she has stated that she saw Akshay @ Tony fleeing from the said spot and that Siraj

was lying on the road in a pool of blood. The said witness has not seen any of the persons at the said spot, except deceased-Siraj and co-accused-Tony.

6 The statement of Amol Vishwasrao, recorded on 2nd August 2018, shows that he had seen the incident which took place on 15th December 2018 at 12:45 a.m. He has stated that he had seen four persons assaulting one person with stones and cement block. Both the said statements relied upon by the learned A.P.P were recorded almost after 10 months of the incident. In the identification parade, which was held on 29th January 2019, the aforesaid witness i.e. Amol Vishwasrao has identified the applicant as being one of the assailant. It appears that the said identification parade was also held belatedly. Admittedly, no role has been ascribed to the applicant. No motive is also alleged as against the applicant. The applicant is in custody since 8th December 2018. Investigation is complete and charge-sheet is filed. The applicant has no antecedents.

7 Considering the aforesaid, the application is allowed on the following terms and conditions :

ORDER

- (i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 20,000/- with one or two sureties in the like amount;
- (ii) The applicant shall attend the concerned Police Station on the first Saturday of every month from 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 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 with the conduct of the trial and attend all the dates before the trial Court, unless exempted;

(vi) The applicant shall file an undertaking with regard to clauses (ii) to (v) in the trial Court, within two weeks of his release;

(vii) If there are two consecutive defaults either in attending the Police Station or in appearing before the trial Court, or breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

8 The application is accordingly disposed of.

9 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.

10 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.