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

CRIMINAL BAIL APPLICATION NO.1837 OF 2019

Kishor Bhimrao Karande

...Applicant

Versus

State of Maharashtra

...Respondent

Mr.V.K.Rathod, for the Applicant.

Mr.S.V.Gavand, A.P.P for the Respondent - State.

CORAM : REVATI MOHITE DERE, J.

DATE : 22nd 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.311 of 2018 registered with the Bhandup Police Station, Mumbai, for the alleged offences punishable under Sections 307, 504 r/w 34 of the Indian Penal Code.
3. Learned Counsel for the applicant submits that although the injured – Sachin Kulkarni has categorically stated that the applicant along

with co-accused – Kiran Karande assaulted him with a koyta on his head, there are two child witnesses, who have stated that the applicant was not present at the spot, when co-accused - Kiran, assaulted Sachin. He submitted that there is no reason to disbelieve the said two child witnesses.

4. Learned APP opposed the application. He submitted that apart from the injured – Sachin, another eye-witness – Sandesh has also stated that the applicant along with co-accused – Kiran assaulted Sachin with Koyta on his head. Learned APP, however, does not dispute the fact that the child witnesses have not disclosed the presence of the applicant, at the spot, when co-accused – Kiran assaulted Sachin on his head with a koyta. He further submits that the applicant has no antecedents.

5. Perused the papers. The incident took place on 31st August, 2018, at about 7.15 p.m. Prior to the said incident, there was a quarrel that had taken place between the injured – Sachin and co-accused – Kiran. It appears that in the incident which took place at 7.15 p.m., initially there was a quarrel between Sachin and co-accused – Kiran and Kiran is alleged to have assaulted Sachin with a koyta on his head. Thereafter, according to the

injured – Sachin, the applicant also assaulted him with a koyta on his head. Sachin sustained serious grievous injuries on his head, in the said incident. Although there is another witness – Sandesh, who has also supported the statement of the injured – Sachin, with respect to the assault by the applicant with a koyta on Sachin's head, there are two child witnesses, who have specifically stated that apart from injured – Sachin and co-accused – Kiran, nobody else was present at the spot. They have specifically stated that at the time of the assault, the applicant was not present at the spot. Whether or not the applicant was actually present at the post, as stated by Sachin, is a matter which will be decided by the trial Court. The applicant is in custody since September, 2018. Investigation is complete and charge-sheet is filed. The applicant also has no antecedents.

6. Having regard to the discrepancy with regard to the presence of the applicant at the spot, the application is allowed and the applicant is enlarged on bail on the following terms and conditions:-

ORDER

i) The Applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount;

- ii) The Applicant shall attend 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 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 trial Court as well as to the concerned Police Station, in writing;
- iv) The Applicant shall not tamper with the evidence or attempt to influence/contact the complainant, witnesses or any person concerned with the case;
- v) The Applicant shall co-operate in the conduct of the trial;
- vi) An undertaking to the aforesaid clauses (ii) to (v), shall be filed by the Applicant, in the Registry of the trial Court, within two weeks of his release;

vii) If there are 2 consecutive defaults either in attending the Police Station or in appearing before the trial Court or breach of any of the conditions as stated above, the prosecution will be at liberty to apply for cancellation of Applicant's bail.

7. The Application is allowed and disposed of in above terms.

8. It is made clear, that the observations made herein are *prima facie* and are confined to this application and the learned Judge to decide the case on its own merits, uninfluenced by the observations made herein.

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

REVATI MOHITE DERE, J.