

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO. 370 OF 2023**

Afzal Haji Khan@ Afzal Khan

.. Applicant

Versus

State of Maharashtra

.. Respondent

Mr.M.A.Khan a/w Mr. Tausif SK, for the applicant.

Ms.M.R. Tidke, APP for the State.

Mr. Liladhar Patil, P.I. R.A.K Marg Police Station, Mumbai.

CORAM: BHARATI DANGRE, J.

DATED : 7th NOVEMBER, 2023

P.C:-

1 The applicant seek his discharge in Sessions Case No. 448 of 2023, which has emanated from C.R.No. 668 of 2022 registered with R.A.Kidwai Marg Police Station, the complaint being lodged by one Faisal Mehmood Thayyum Ghanchi, invoking Section 324 r/w 34 of IPC.

The complainant allege that on 2/12/2022, when he along with his friend Maaz Rauf Mussa was en-route his house after delivering certain goods, and when they halted on the roadside as he wanted to urinate, whereas his friend was having a puff, a normal taxi stopped nearby and three persons alighted therefrom and one of the person was about to assault him by knife, and when he evaded the blow, the knife landed on his left hand arm and he fell down. The knife was then picked up by another person, who assaulted him on his back. When he ran on the road, seeking help towards his friend, the assailants fled away from the spot. He was taken to the hospital and offered treatment.

The MLC report has disclosed, three incised wounds on his buttock, back extending from upper back to lower back and flank region of abdomen, one CLW lacerated wound on left deltoid, in form of grievous injury.

2 The moot question is, in the entire incident, which is attributed to three unknown persons, how is the applicant is connected.

The complainant on 7/12/2022 i.e. four days after the first complaint is lodged gave a supplementary statement, wherein he provided an information that on 14/11/2022, he received phone calls from two mobile numbers, and he was threatened that whatever he was doing with Afzal Bhai was not correct and he had lodged an NC complaint with Pydhonie police station.

He referred to the previous enmity with Afzal, the applicant and categorically stated that while the assault was mounted by three unknown persons, he heard one person, to say that, Afzal had prohibited him from undertaking on the paper work and therefore, he suspected that it is Afzal, i.e. the applicant, who had managed attack through the unknown persons resulting into serious injuries.

3 With this scanty material, when four days after the incident merely because the complainant express a suspicion since he had received some threat calls, the applicant is arraigned as an accused. The mobile phones, which are referred in the supplementary statement do not belong to the present applicant.

When I repeatedly inquired with the learned APP, whether there is any other material than this in the charge-sheet, she clearly answered in the negative.

4 In order to establish the case, the prosecution definitely is duty bound to establish its case by cogent and reliable evidence and mere suspicion or assumption expressed by the complainant is not sufficient. The previous threats, which are received by the complainant on 14/11/2022, cannot be connected to present applicant merely because the complainant suspect that the applicant had engaged these persons to eliminate him and this definitely is not sufficient evidence, to take him to trial.

The power to be exercised under Section 227 r/w 401 of Cr.P.C definitely do not warrant a fishing and roving inquiry but the material in the charge-sheet is expected to be carefully scanned, to ascertain whether it is sufficient, so as to undergo the rigmarole of the trial. Merely on the ground of past rivalry, in absence of any positive material to indict him, the applicant cannot be said to be the person who had arranged for the assault, and his involvement is only based on suspicion.

Hence the applicant deserve his discharge from case no. 448 of 2023, by quashing and setting aside the impugned order dated 30/08/2023.

Criminal Revision Application is allowed.

(SMT. BHARATI DANGRE, J.)