

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 3567 OF 2022

Hussain Mutsafa Khan

...Applicant

V/s.

The State of Maharashtra

... Respondent

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Mr.Prashant Pandey a/w Mr.Dinesh Jadhvani, Mr.Irfan Unawala,
Mr.Aigan Menon, Mr.Ashish Jain, Mr.Dipsy Sequeria i/b W3
Legal LLP, for the Applicant.

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

Mr.Vikas Tambe, PSI, Dindoshi Police Station.

CORAM : SHIVKUMAR DIGE, J.

DATE : 29th AUGUST 2023

P.C:-

. By this Application, Applicant is seeking bail in
Crime No.660 of 2021 registered with Dindoshi Police Station
for the offence's punishable under Sections 302, 307, 397,
506(ii), 143, 145, 147, 149 of Indian Penal Code and Section 4
and 25 of the Indian Arms Act and Section 37(1)(a) and 135 of
the Maharashtra Police Act.

2. It is prosecution's case that on 11th August 2021, at 1.30 p.m. the Complainant Arman Khan along with his friend Arif were standing in front of Sahshi wine shop at Hanuman Nagar at that time one Abhi Pawar came there. The Arif and Abhi had rivalry against each other due to old issue's, Abhi Pawar threatened Arif that he will face consequences. That since Arif and Abhi used to fight on regular basis, the Complainant didn't find it necessary to file a complaint to the Police Station. On 12th August 2021 at around 12.40 a.m. the Complainant and Arif were sitting at Dambar Company Compound, suddenly Abhi Pawar, his parents, Hussain and other four to five unknown persons came there. They were possessing chopper, koyta, Bamboo stick, hockey stick. Abhi and his parents started abusing Arif. Than Arif confronted them as to why they were abusing, to which Abhi Pawar attacked Arif with koyta on his head. Subsequently Abhi Pawar's parents started assaulting Arif with bamboo stick. The Complainant intervened in the fight and tried to stop them, to which Abhi Pawar attacked the Complainant with koyta.

3. The Complainant and Arif were also assaulted by other four to five persons with bamboo stick, hockey stick etc. In the said assault Complainant and Arif got serious injuries. The Complainant filed Complaint. The police registered offence under Section 307, 326, 143, 145, 147, 504 and 506 of IPC and under Sections Indian Arms Act and Maharashtra Police Act. Thereafter, while taking treatment Arif succumbed to injuries, hence, Section 302 was added.

4. It is contention of the learned counsel for the Applicant that, in the complaint filed by Arman Khan dated 12th August 2021, the name of Applicant is named as Hussain, brother of Asfaq and role attributed to Applicant is that Applicant assaulted the Complainant with chopper on his hand and injured him. The learned counsel further submitted that, supplementary statement of Complainant-Arman was recorded by police on 25th August 2021 and in the supplementary statement, the allegations made against the Applicant are that Applicant threw beer bottle towards the Complainant. The learned counsel further submitted

that, incident happened on 12th August 2021. After arrest of the Applicant, identification parade was taken by Police, in the said identification parade, Complainant Arman and Mousin eye witnesses were called to identify the Applicant, but in said identification parade both witnesses did not identify the Applicant, these two person's were present at the time of the incident. It shows that Applicant was falsely implicated in the case and there is no evidence against the Applicant. The Applicant is in jail for more than two years. The investigation is completed and charge-sheet has been filed. Hence, requested to allow the Application.

5. The learned APP vehemently submitted that, the Applicant was part of unlawful assembly. The Complainant has specifically stated that Applicant had assaulted with the chopper. In the complaint it is stated that deceased was assaulted by all the persons who were present there. The Applicant was one of them, so role of the Applicant cannot be segregated. He is equally responsible as other co-accused. The Applicant with other

co-accused assaulted the Complainant and deceased who were unarmed, with deadly weapon.

6. The learned APP further submitted that, the incident of assault is recorded and in that recording the presence of Applicant is recorded. It shows his involvement in the crime. The learned APP further submitted that, the blood stains found on the shirt of Applicant, it matches with the blood group of deceased. As per disclosure statement of Applicant under Section 27 of the Indian Evidence Act, the chopper is recovered which was used in the Crime. Hence requested to reject the Application.

7. The learned APP relied on the decision of Hon'ble Supreme Court in the case of *Lalji V/s. State of Uttar Pradesh*¹ and *Bharwada Bhoimbhai Hirjibhai V/s. State of Gujrat*²,.

8. I have heard both learned counsel. Perused FIR and charge-sheet.

1 1989 DGLS (SC) 29

2 1983 DGLS (SC) 171

9. In the complaint it is stated that Applicant had assaulted the complainant with chopper on his hand and in supplementary statement it is mentioned that Applicant threw beer bottle towards the Complainant. It is further mentioned that Abhi Pawar and other some persons had assaulted the Arif. After arrest of the Applicant Test Identification Parade was taken on 4th August 2022. In the said parade Complainant Arman and one eye witness Mousin Khan were called to identify the Applicant. Both the witnesses could not identify the Applicant. As pointed out by the learned APP that, at the instance of the Applicant chopper was recovered and blood stains on the cloth's of Applicant matches with the blood group of deceased. It would be part of the trial as eye witnesses could not identify the Applicant in the Test Identification Parade remains a fact. Moreover, the allegations against the Applicant are that he assaulted to the Complainant with chopper on his hand whereas different role is attributed in supplementary statement, that he threw beer bottle towards Complainant, contention in respect of role of Applicant under Section 149 of IPC it would be part of

trial. The Applicant is in jail for more than two years. Investigation is completed and charge-sheet has been filed. No further detention of the Applicant is required.

10. I have gone through the case laws cited by the learned APP. The facts of the cited case laws are in respect of Criminal Appeal. These are different from facts of present case.

11. In view of the above I pass following order:-

ORDER

(i) The Applicant be released on bail in Crime No.660 of 2021 registered with Dindoshi Police Station, Mumbai on furnishing PR bond of Rs.25,000/- with one or two solvent sureties in the like amount.

(ii) After his release from jail the Applicant shall attend the Dindoshi Police Station, Mumbai once in a month i.e. on every 1st Monday of the month

between 11.00 a.m. to 3.00 p.m. till the framing of charge.

(iii) The Applicant shall not tamper with the evidence and/or influence the prosecution witnesses.

(iv) Application is allowed in the aforesaid terms.

(SHIVKUMAR DIGE, J.)