

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE – CRIMINAL
BAIL APPLICATION NO.327 OF 2015

Mohd. Salim Hanif Khan Applicant
Vs.
The State of Maharashtra Respondent

Mr. A. Majid H. Banderkar for the Applicant.
Ms Rutuja Ambekar, APP, for the Respondent-
State.

CORAM: REVATI MOHITE DERE, J.

DATED: MARCH 30, 2015

P.C:

1. Heard the learned counsel for the applicant and the learned APP for the respondent-State.

2. By this application, the applicant seeks his enlargement on bail in connection with C.R. No.411 of 2014, registered with the Shivaji Nagar Police Station, District Mumbai for the alleged offences punishable under

Sections 302, 326 and 504 r/w Section 34 of the IPC.

3. The incident in question has taken place on 18-9-2014, at about 9:00 p.m.. The statement of the injured, Ahmed Khan, came to be recorded on 19-9-2014, pursuant to which an FIR was registered on 23-9-2014, alleging offences punishable under Sections 326 and 504 r/w Section 34 of the IPC. According to the complainant (now deceased), on 18-9-2014, when he was going towards Ramanmama Nagar Zopadpatti, Bainganwadi, one known person by the name Aamir dashed into him while walking. The complainant is alleged to have told him to "look and walk". Aamir is also alleged to have retorted, you also look and walk. Pursuant to the said exchanges, Aamir is alleged to have started abusing the complainant. It is alleged that Aamir came there with an iron pipe and

assaulted the complainant on his left hand. Thereafter, Bashir, Munna and the present applicant are stated to have come and assaulted the complainant (deceased). Bashir is stated to have assaulted the complainant with an iron pipe and caused grievous injuries on his hand and leg. Munna is stated to have assaulted the complainant with an iron pipe on his head and the present applicant is stated to have assaulted the complainant on his head. After the said assault, Bashir, Munna, Salim and Aamir are stated to have abused the complainant. The police thereafter arrived and took the complainant to the hospital.

4. The learned counsel for the applicant contended that the complainant died on 27-9-2014. He submitted that the other co-accused who are also alleged to have assaulted the complainant (deceased) have been

enlarged on bail by the Sessions Court. He submits that the deceased died after almost eight days after the incident. According to the learned counsel for the applicant, the statement of one Yasin Nazir Tulve shows, that a crowd had gathered outside Bashir and Sayad Khan's shop and hence he too went there to see what had happened. According to Yasin, Ahmed and his three friends were brandishing swords on the passers-by and abusing them. At that time, Ahmed is stated to have dashed into Yasin. When Yasin asked him to look and walk, it is alleged that Ahmed got enraged, abused him and started assaulting him with a sword. The learned counsel submits that in the assault by Ahmed and his friends, Yasin received serious injuries, pursuant to which the other accused came to the spot along with a mob and that the complainant received injuries at the hands of the mob. He submitted that there is a

cross-complaint with regard to the same incident, lodged by Yasin Tulve, being C.R. No.401 of 2014, alleging offences under Sections 307, 506 Part-II, etc., r/w Section 34 of the IPC as against Ahmed (complainant-deceased) and his friends. He submitted that the complainant was a known criminal and was released on bail, at the relevant time, in connection with an offence punishable under Section 302 of the IPC.

5. The learned APP opposed the bail application. She does not dispute the fact that there are cross-complaints with regard to the same incident between the parties.

6. Perused the charge-sheet. It appears that there are cross-complaints with regard to the same incident. It also appears that although the incident took place on 18-9-2014,

the complainant succumbed to his injuries on 27-9-2014. It also appears from the post-mortem report that the cause of death was as under:

"Evidence of septicemia with consolidation of lungs in a diagnosed and treated case of polytrauma with head injury. However opinion reserved pending for acusary examination reports."

There are two versions to the incident. The applicant has no antecedent. Investigation is complete and charge-sheet has been filed.

7. Considering the aforesaid facts, and the fact that the co-accused have also been enlarged on bail, the applicant is entitled to be released on bail on the following terms and conditions:

ORDER

(i) The applicant be released on bail on furnishing P.R. Bond in the sum of Rs.15,000/-

with one or two sureties in the like amount;

(ii) He shall attend the Shivaji Nagar Police Station, Mumbai, on the first Saturday of every month between 10:00 a.m. to 11:00 a.m. till the conclusion of the trial;

(iii) He shall not leave Mumbai and Thane Districts without the prior permission of the trial Court;

(iv) The applicant shall furnish his address as well as his contact number, both to the concerned police station as well as to the Court seized with the case, and if there is any change in the address or the contact number, the same shall also be immediately communicated to the PI, Shivaji Nagar Police Station, Mumbai as well as the Court seized with the case.

(v) The applicant shall co-operate in the conduct of the trial.

(vi) If there is breach of any of the aforesaid conditions, the prosecution will be at liberty to seek cancellation of the applicant's bail.

8. The application is allowed in the aforesaid terms and accordingly stands disposed of.

9. The learned trial Judge to conduct the case on its own merits, uninfluenced by the observations made in the present order, which are prima facie in nature.

10. Parties to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)