

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1155 OF 2015

Vajir Dawood Ali Sheikh. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. Amin Solkar, advocate for Applicant.

Mr. Rajesh Khobragade, advocate for complainant.

Ms. P.P. Shinde, APP for State.

Mr. S.T. Navkudkar, PI, Agripada Police Station.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : AUGUST 3, 2015

P.C.:

1 Heard the learned Counsel for the applicant, learned Counsel for the complainant and the learned APP for State. Perused the papers.

2 This is an application under Section 439 of the Code of Criminal Procedure, 1973. The applicant herein is arrested on 24/2/2015 in Crime no. 41 of 2015 registered at Agripada Police Station for offence

punishable under Section 302 read with Section 34 of the Indian Penal Code.

3 It is the case of the prosecution that on 22/2/2015 Mohammed Shafique Abdul Majid Shaikh lodged a report at the police station alleging therein that one Taufique Ahmed Abdul Wahab Siddique was conducting Usmania Hotel owned by Dawood Ali Sheikh who is the father of the applicant, since last 25 years and that by way of deposit, Taufique Ahmed Abdul Wahab Siddique had given Rs. 3.50 Lakhs to Dawood Ali Sheikh. Mehmood Ahmed Abdul Wahab Siddique, Anis Suleman Siddique, Fakruddin Kamaruddin Siddique also used to work in the said hotel. In May, 2014, when Taufique Ahmed Abdul Wahab Siddique went to his native place, at that time, Dawood Ali Sheikh took back the possession of the hotel forcibly. Since then, there was some dispute between both the parties.

4 On 21/2/2015 at about 9 p.m. the complainant was informed by Taufique that there is a meeting in respect of settlement of

accounts between Dawood and Taufique. He reached Usmania Hotel at about 9.15 p.m. On the spur of the moment there was some altercation between both the groups and suddenly the present applicant is alleged to have caught hold of Taufique and pushed him. Taufique fell on the ground. At that time, Jaffar Shaikh had assaulted Taufique on his head with iron stool. Thereafter, Parvez assaulted Taufique by fists blows. Thereafter Taufique ran towards Sagar Medical Store. Jaffar Shaikh followed him and had assaulted him on his private part with kick blow. Taufique fell on the ground. The people on the scene of the offence had intervened. Anis and two others had taken Taufique to the hospital. Taufique was declared dead at the time of admission at the hospital. The post mortem notes would show that Taufique had sustained one contusion on his head which is reflected in column no. 17. As far as cause of death is concerned, doctors performing autopsy have opined that the cause of death is "Acute coronary insufficiency in an alleged case of assault."

5 The learned Counsel for the applicant has drawn the attention of this Court to column No. 20(g) of the post mortem notes which would show that there was concentric block to the extent of 50-60 % to his right coronary. According to the learned Counsel for the applicant, prima facie no offence under Section 302 of the Indian Penal Code can be made out. That the present applicant had not assaulted to Taufique with any weapon. The incident had occurred on the spur of the moment and the only allegations against the applicant is that he had caught hold of Taufique by his collar and pushed him.

6 The learned Counsel representing the original complainant has vehemently argued and opposed for grant of bail. According to him, the applicant does not deserve grant of bail as the gravity with which he had pushed Taufique is sufficient to hold that he had an intention to kill Taufique. However, the said submission is unwarranted.

7 Taking into consideration the papers of investigation and submissions advanced across the bar, the applicant deserves grant of bail.

8 It is made clear that the observations made hereinabove are restricted to an application under Section 439 of the Code of Criminal Procedure, 1973. The same shall not be considered while deciding the application for discharge or for quashing of FIR or at the time trial. The learned Trial Court shall decide the matter uninfluenced by the above said observations and arrive at a conclusion only on the basis of the substantive evidence adduced by the prosecution at the time of trial.

9 Hence, following order is passed:

ORDER

- (i) The application is allowed.
- (ii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- and one or more sureties in the like amount.

(iii) The applicant shall not reside within the jurisdiction of Agripada Police Station for a period of 3 months from the date of his release.

(iv) The applicant shall furnish his residential address, where he is going to reside during the pendency of the trial, cell number, landline number and all other details, as required by the investigating agency and also inform the change, if any, to them.

(iv) The applicant shall attend each and every scheduled date of the trial.

10 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)