

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1251 OF 2015**

Abdul Latif Ismail Ali Sah

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. J. J. Bardeskar for the Applicant

Ms. Rutuja Ambekar, A.P.P for the Respondent-State

PSI Mr. Raghunath Pandhre from Kandivali Police Station, Thane, is present

CORAM : REVATI MOHITE DERE, J.
MONDAY, 28th SEPTEMBER, 2015

P.C. :

1. Heard learned Counsel for the applicant and the learned A.P.P for the State.
2. By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 378 of 2014 registered with the Kandivali Police Station, Mumbai, for the alleged offences punishable under Sections 302, 397, 120(B) r/w 34 of the Indian Penal Code and under Section 37(A) and 135 of the Bombay Police Act.

3. Learned Counsel for the applicant states that the entire prosecution case rests on circumstantial evidence. He submits that according to the complainant, when he went to his shop, as his brother Chandrprakash (deceased) had not returned home, he found his brother Chandrprakash lying in a pool of blood. Pursuant to the same, the aforesaid complaint came to be lodged by the complainant, as against Madan Maurya, Riyaz Khan and one unknown person. It is alleged by the complainant that his brother Chandrprakash was assaulted by a knife and that jewellery worth Rs. 11 lakhs was stolen from the shop. According to the learned Counsel for the applicant, the statement of Manoharlal Sevak-another brother of deceased Chandrprakash shows, that when he went to the shop, he found his brother-Chandrprakash, Madan Maurya and one unknown person at the said shop and later, when he left, he saw Madan Maurya and Riyaz Khan on a footpath together. He submitted that there is no material to connect the applicant with the alleged offence, either, in the form of recovery, motive or last seen. He submitted that the applicant has not been named in the FIR nor is he alleged to have been present in the shop on the day of the incident. He also submitted that the applicant has no antecedents.

4. Learned A.P.P opposed the bail application. She submitted that the allegation *qua* the applicant is that he conspired to kill the deceased along with the other co-accused and the same is reflected in the memorandum statement of the co-accused recorded under Section 27 of the Evidence Act. She further submits that the co-accused Riyaz had contacted the applicant after the assault on his mobile and disclosed to him that Chandraprakash was eliminated as per their plan, pursuant to which, the applicant provided shelter to the accused. She submitted that co-accused Madan Maurya had called the applicant after the said assault on the deceased. On being questioned whether there is anything to indicate that the applicant was present at the spot at the relevant time, she has replied in the negative. She states that the applicant has no antecedents.

5. Perused the charge-sheet. The prosecution case rests on circumstantial evidence. There is no recovery at the instance of the applicant nor is there any evidence of last seen. Although it is alleged that the applicant had conspired with the other co-accused, *prima facie*, it appears that the applicant was not present when the deceased was

assaulted. As far as the apprehension of the learned A.P.P that the applicant is a resident of Uttar Pradesh, and that he may not be available for trial, the same can be taken care of by imposing strict conditions on the applicant to ensure his presence in the Trial Court.

6. Considering the aforesaid facts and the fact that the investigation is complete and charge-sheet is filed, the applicant is enlarged on bail on the following terms and conditions :

ORDER

(i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 20,000/- with one or two local sureties in the like amount;

(ii) The applicant shall report to the Kandivali Police Station on the first and third Saturday of every month between 10:00 a.m. to 11:00 a.m. initially for a period of six months and thereafter 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 not leave Mumbai, Thane and Navi Mumbai without the permission of the Trial Court;

(iv) The applicant shall not tamper or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(v) 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 Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(vi) The applicant to cooperate with the conduct of the trial;

7. The Application is allowed in the aforesaid terms and is accordingly disposed of.

8. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.
9. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.

CERTIFICATE

Certified to be true and correct copy of the original signed Order.
