

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 2556 OF 2014

Ishrat Irfan Bargir. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. Kuldeep S. Patil, advocate for Applicant.

Mr. A.S. Shitole, APP for State.

CORAM : SMT.SADHANA S. JADHAV,J
DATE : JANUARY 21, 2015

P.C.:

1 Heard the learned Counsel for the applicant 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 17/11/2013 in
Crime No. 222 of 2013 registered at Miraj City Police Station for
offence punishable under Section 302 read with Section 34 of the
Indian Penal Code. Investigation is completed and charge-sheet is
filed.

3 It is the case of the prosecution that in the intervening night of 16th and 17th November, 2013 at about 2 a.m. father of Tipusultan Zakir Lashkari had taken his injured son to Mission Hospital, Miraj. At the time of admission, he disclosed that his son Tipusultan was assaulted by unknown persons. In the course of taking treatment, Tipusultan succumbed to the injury at about 10.30 a.m.. After his demise A.D. No.135 of 2013 was registered. The inquest panchanama was conducted on the dead body of Tipusultan between 11.35 a.m. and 12.15 noon. The persons who showed/traced the dead body was Sarfaraj Zakir Lashkari i.e. brother of the deceased. The dead body was identified by Sarfaraj Zakir Lashkari in A.D. No. 135 of 2013. The body was sent for post mortem at about 11.30 a.m. on 17/11/2013. The dead body was handed over to the relatives of the deceased in the A.D. Enquiry No. 135 of 2013.

4 At about 12.40 in the noon Sarfaraj Zakir Lashkari i.e. brother of the deceased lodged a report at the police station alleging therein that on 16/11/2013 at night after 10 p.m. he and his brother had

been in the square near his house. When the present applicant had called his brother on the cell phone and therefore, they had been together. After some time, his brother Tipusultan and the present applicant went towards Mangal Talkies. At about 1.05 a.m the complainant had been to drink water. At that time, one Shamshuddin Maner rushed to the complainant and informed him that his brother Tipusultan is lying in front of pan-stall in an injured condition. According to the complainant, he and Maner had enquired with the injured and at that time, the injured had disclosed that the present applicant and Akram had assaulted him on the head with an iron rod, since they suspected that he would inform their family members about their addiction.

5 The case rests upon the evidence of last seen together and the oral dying declaration which implicates the present applicant as well as Akram Aslam Momin. It is pertinent to note that by an order dated 16/7/2014 Akram Aslam Momin has been enlarged on bail by this Court (Coram : A.M. Thipsay, J). The Hon'ble Court has observed that the material against Akram was the extra Judicial confession

which was made by the co-accused No. 1 Ishrat to one Salman Kadar Shaikh. It is not necessary to consider the extra judicial confession of the present applicant in view of the fact that the prosecution allegedly has positive evidence in the form of oral dying declaration made to the complainant as well as Maner.

6 Learned APP has drawn attention of this Court to the statement of Shamshuddin Maner, which shows that before informing the first informant Maner had enquired with Tipu Sultan about the assailants and the injured had disclosed that the present applicant and Akram had assaulted him. He does not say that he had enquired with the injured alongwith the complainant. In spite of it, Maner had disclosed to the complainant that Tipu Sultan is lying unconscious in injured condition in front of pan-stall.

7 Taking into consideration the fact that although the role attributed to the present applicant and Akram is the same, co-accused Akram has been enlarged on bail. By virtue of doctrine of parity, the present applicant also deserves to be enlarged on bail.

8 The observations made hereinabove are prima facie in nature. The same shall not be considered for deciding an application for discharge or for quashing of FIR or at the time of trial.

9 Hence, the 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.15,000/- and one or two sureties in the like amount.
- (iii) The applicant shall report to the police station on 1st Sunday of every month till conclusion of the trial.

10 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)