

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2313 OF 2015

Rafiqulla Jabbar Ali Khan	..Applicant
-Versus-	
The State of Maharashtra	..Respondent

Mr.Ramprasad Gupta for applicant
Ms. M.H.Mhatre, APP for State.

CORAM : A.S.GADKARI, J.

DATE : 14th December 2015

P.C.

1] The applicant is seeking bail in C.R.No.296 OF 2015 dated 9th June 2015 registered with Sakinaka Police Station, Andheri, Mumbai under section 302 read with 34 IPC.

2] The F.I.R. dated 9th June 2015 was lodged by Mr.Mohd. Hanif Khan brother of the deceased Abdul Hamid Ahat Khan @ Sohail Kashmiri. In the said FIR, the complainant has stated that prior to the date of incident, there was enmity between the deceased Sohail and Shakeel Muttonwala. He has further stated that the said enmity had arisen due to money transaction between Shakeel and Sohail.

It is due to the said enmity, Shakeel Qureshi @ Muttonwala along with his accomplice has committed murder of Sohail. After investigation, the police have not filed charge sheet in the case.

3] Learned Counsel for the applicant submitted that the present case is based on circumstantial evidence. The only piece of evidence as against the present applicant is that he has been seen in C.C.T.V. footage near the spot of incident and apart from the said piece of evidence, there is no other evidence against the applicant.

4] Learned APP has submitted that the said C.C.T.V. footage was taken into custody by effecting panchanama dated 2nd July 2015 wherein the witness Mohd. Raffique has identified the present applicant as Bagga. She fairly further conceded to the said fact that apart from the said footage there is no other evidence available against the applicant.

5] I have gone through the charge sheet and documents produced. The panchanama dated 2nd July 2015 is of the C.C.T.V. footage which was played in the presence of witness Mohd.

Raffique. The said witness has at item No.1 for time 4.43.02, stated that at that point of time, Bagga, Shailesh Sharma and Subhash Thapa went near the handcard which was near the spot of incident. The nick name of the applicant is Bagga. On a query being put by this Court to the learned APP, as to whether the supplemental statement after panchanama is recorded of this witness by the investigating agency, the answer was "NO". As of today, there is no other evidence to show that alleged "Bagga" is the present applicant or not.

6] In view of the above, I am of the opinion that the applicant has made out a case for his release on bail.

Hence, the following order:-

- (i) The applicant shall be released on bail in C.R.No.296 of 2015 registered with Sakinaka Police Station, Andheri, Mumbai on his furnishing P.R.Bond of Rs.25,000/- with one or two solvent sureties in the like amount;
- (ii) The applicant shall attend Sakinaka Police Station once in a fortnight on Monday between 10.00 a.m. to 12.00 noon;

- (iii) After his release, the applicant shall submit proof of his residential address with I.O. and also with the trial court;
- (iv) The applicant shall not tamper with and/or influence the prosecution witnesses;
- (v) The application is allowed in the aforesaid terms;

(A.S.GADKARI, J)