

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1442 OF 2016 IN
CRIMINAL APPEAL NO.125 OF 2016

Husainbin Hasan Yafai @ Chous ... APPLICANT

VERSUS

The State of Maharashtra ... RESPONDENT

.....
Shri Joydeep Chatterji, Advocate for applicant
Shri K.S. Patil, A.P.P. for respondent/ State
.....

CORAM: A.I.S. CHEEMA, J.

DATED: 12th July, 2016.

ORAL ORDER :

1. Perused the Criminal Application for bail. Heard learned counsel for the applicant - accused and the learned A.P.P. for State. The applicant - accused has been convicted for offence under Section 307 of the Indian Penal Code.

2. Learned counsel for the applicant - original accused has submitted that, the incident occurred on 15.6.2013 at about 6.30 a.m. It is stated that, the accused was arrested on 28.8.2013 and since then he has been in jail. The counsel

argued that, the case of the prosecution is that the accused stabbed his uncle with knife in the neck of the uncle on the day of the incident. The counsel has taken me through oral evidence of various witnesses to submit that the victim Khalid claimed that the accused, due to dispute of land, stabbed him. Counsel pointed out that, the victim claimed to have walked to the house of P.W.5 Alwin after the incident with the knife stuck in his neck and which had entered from one side of the neck and had come out from the other side. The counsel submits that, P.W.5 Alwin deposed that although the victim came to him and he took the victim to police and although the witness deposed that he asked the complainant regarding the incident, but the complainant had not told him anything about it. According to the counsel, the medical evidence shows that, in the same evening, the complainant had told the doctor about the incident. According to him, after the incident, P.W.5 Alwin was the first person whom the complainant met but did not tell him anything about the incident. The learned counsel further pointed out the evidence of the complainant and the contradictions, omissions as found in the F.I.R., which according to the counsel, were proved. According to the counsel, there is reason to doubt that the complainant falsely involved the accused due to earlier dispute of land for an incident, for which the accused was not responsible.

3. The learned A.P.P. submitted that, there was sufficient evidence where the complainant with knife stuck in his throat, was helped by P.W.5 Alwin to the Police Station and from the Police Station to the hospital. According to A.P.P., with knife stuck in his throat, even if the complainant did not tell P.W.5 Alwin about the incident, his condition needs to be understood and the accused cannot make capital of the same. The learned A.P.P. submitted that, there is no reason why the complainant would falsely take the name of the accused when he suffered such severe stab injury, which could have killed him.

4. I have gone through the evidence, copies of which have been filed. I have also gone through the judgment of the trial Court. The trial Court has discussed the oral evidence and came to the conclusion that the accused deserved to be convicted and that the offence has been established. Looking to the reasons recorded by the trial Court and the oral evidence, prima facie it appears that, the State has acceptable evidence on record and prima facie it does not appear that the appellant has good defence to offer.

5. Looking to the serious offence involved in this matter the sentence which has been passed, this is not a fit case where the applicant should be granted bail. It cannot be forgotten that

there are serious disputes pending between the parties since before and which led to the present incident taking place. Even as undertrial, accused was in jail. Now he happens to be convicted accused.

6. There is no substance in the bail application. The same is rejected.

(A.I.S. CHEEMA, J.)

fmp/cr1442.16