

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

Criminal Application No. 5742 of 2016

District : Jalna

John @ Nanya Suresh Nirmal,
Age : 28 years,
Occupation : Labour,
R/o. Powerloom, Old MIDC,
Jalna, Taluka & Dist. Jalna. .. Applicant.

versus

The State of Maharashtra,
Through P.S. Taluka Jalna. .. Respondent.

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Mr. A.S. Usmanpurkar, Advocate, for the applicant.

Mr. S.J. Salgare, Addl. Public Prosecutor, for the respondent.

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CORAM : A.M. BADAR, J.

DATE : 25TH OCTOBER 2016

ORAL ORDER:

The applicant / accused in Crime No. 124/2016 registered with Jalna Taluka Police Station, District Jalna, for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, by this application, is seeking his release on bail.

2. Heard the learned Counsel appearing for the applicant / accused. He argued that informant - widow has stated name of three persons as assailants of her deceased husband but ultimately co-accused Sonya Nirmal and Kittya Nirmal were discharged under Section 169 of the Code of Criminal Procedure. The learned Counsel further argued that alleged eye witness Madhukar Bagal was not knowing the assailant, as seen from his statement under Section 164 of the Cr.P.C. and the investigator has not conducted test identification parade. Therefore, the applicant is entitled for bail as there is no other evidence to connect the applicant to the crime in question.

3. The learned Addl. Public Prosecutor relied on oral dying declaration of the deceased so also his confessional statement for opposing the application.

4. I have carefully considered the rival submissions and perused the charge-sheet.

5. Shaikh Pasha Shaikh Rasul died homicidal death on 21.03.2016. Cause of his death from autopsy report is 'penetrating injury to right lung'. His dead body was having two penetrated wounds, on 3rd intercostal space near upper later part of sternum and the another was at right side midchest.

6. Deceased Shaikh Pasha Shaikh Rasul was an

employee on Juice Centre of Pancham Thapa. FIR of widow of the deceased shows that on 21.03.2016, deceased Shaikh Pasha had been to his work place in the morning hours and at about 09.00 p.m. to 09.30 p.m., his employer Pancham Thapa informed informant widow - Shaikh Rajiya that there was assault on Shaikh Pasha.

7. Evidence against the present applicant comprises of eye witness account given by Madhukar Bagal - a co-employee at the Juice Centre. In his statement under Section 161 of the Cr.P.C., Madhukar Bagal has stated that the present applicant assaulted deceased Shaikh Pasha by means of fist blows and thereafter by means of ice-pick on chest. In his statement under Section 164 of the Cr.P.C. before the learned Judicial Magistrate (F.C.), witness Madhukar Bagal maintained his version but referred the assailant as one person. Madhukar Bagal had not named the assailant in his statement under Section 164 of the Cr.P.C. As such it is during the trial, one will have to consider whether this witness identifies the applicant as assailant of Shaikh Pasha or not.

8. Statement of Pancham Thapa shows that on return to his Juice Centre, he saw Shaikh Pasha lying in injured condition. As per version of Pancham Thapa, upon being asked, Shaikh Pasha disclosed him

that the present applicant assaulted him by means of fist blows as well as an ice-pick.

9. Statement of Shobhabai - monther of the present applicant shows that the present applicant has confessed commission of this crime before her.

10. Oral dying declaration of deceased Shaikh Pasha as such is gaining corroboration from the autopsy report as well as extra judicial confession made by the applicant before his mother. Thus, complicity of the applicant in the offence punishable under Section 302 of the IPC is prima facie established. Therefore, no case for bail is made out.

11. The Application is accordingly rejected.

(A.M. BADAR)
JUDGE

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