

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

**BAIL APPLICATION NO.644 OF 2015
WITH
CRIMINAL APPLICATION NO.295 OF 2016**

Abdul Karim Yusuf Shaikh ... Applicant

vs.

The State of Maharashtra ... Respondent

Mr. A.R. Salunke, for the Applicant.

Mrs. P.P. Shinde, APP for Respondent – State.

Mr. E.N. Shaikh, for the Intervener.

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **21st APRIL, 2016**

P.C.:

. The application is moved for bail. The applicant/accused is facing charges for the offences punishable under Sections 302, 143, 147, 148, 149, 541, 342 and 323 of the Indian Penal Code in C.R. No. 57 of 2014 registered with Wadala police station, Mumbai. The offence is registered at the instance of one Jabar Sherkhan Pathan on 23rd March, 2014.

2. It is the case of the prosecution that on 23rd March, 2014 at around 11.30 p.m. when the complainant and his friend Abdul Rahiman went to darga and while they were climbing staircase of darga, he met his uncle Imran Pathan and one Juned Hali and Munawar. At that time, Juned Hali told the complainant that Salim Jamadar, Yusuf Khabri and Aslam are sitting near the staircase and they are likely to pick-up quarrel. Then they all went down. It is the case of complainant that, as soon as the co-accused i.e. Salim Jamadar, Yusuf Khabri, Aslam Phawada, Rahim, Hamid, Sarfaraz and other two unknown persons saw Imran they shouted "*Kill him-Kill him*" and they started assaulting Imran. The co-accused inflicted blows of knife on the chest, back and stomach of Imran. Therefore, Imran collapsed on the ground. At that time, the co-accused kicked him. The applicant/accused was also present there. He also assaulted the deceased Imran with kicks and fist blows. Thereafter, Imran was taken to the hospital but he was declared dead. Then the complainant approached the police station and the offence was registered against the applicant/accused and other co-accused. The incident has taken place late at night intervening 22nd March, 2014 and 23rd March, 2014. The applicant/accused was arrested on the same day and since

then he is in prison. Hence, this bail application.

3. The learned counsel for the applicant/accused submits that there is no sufficient evidence against the applicant/accused who can be tried for the offence punishable under Section 302 of Indian Penal Code. He submitted that name of the applicant/accused is not mentioned in the first information report. The applicant/accused was not holding any weapon at the time of incident. He is in the prison since last two years. The trial has not yet commenced. He further submitted that the accused Yusuf Khabri and Abdul are granted bail on 23rd March, 2016 by this Court. He submitted that the role attributed to the present applicant/accused is similar. Hence, he prayed that the applicant be released on bail on the ground of parity.

4. The learned prosecutor oppose the bail application. The learned counsel for the complainant relied on the first information report and the supplementary statements of the witnesses. In their statements, the complainant and three witnesses have specifically mentioned the name of the applicant/accused and his overact. They have stated that the applicant/accused was present at the time of

incident and gave kick and fist blows to the deceased when he was laying injured. It is further submitted that police have invoked section 120(B) of Indian Penal Code. It is the case for the offence punishable under Sections 143, 147, 148 and 149 of Indian Penal Code. The applicant/accused had a common object to kill the deceased. Therefore, the applicant/accused may be hold guilty for the offence punishable under Section 302 of Indian Penal Code. The learned counsel for the complainant further submitted that the order passed by this Court releasing other co-accused is challenged by him before the Hon'ble Supreme Court. He further submits that within 15 days the learned Sessions Judge is going to frame the charge. Therefore, there is no urgency to grant bail to the present applicant/accused. He submitted that the applicant/accused has criminal antecedents and one case for the offence punishable under Section 324 of Indian Penal Code is pending against him since 2013.

5. Perused the first information report, statements of the eye witnesses, postmortem report and the other documents. In the first information report, the name of the applicant/accused is not mentioned. In the supplementary statements of the witnesses which

are recorded on the next day, the name of the applicant/accused is mentioned. However, the name of the applicant/accused is mentioned in the supplementary statement dated 24th March, 2014 after the arrest of the other co-accused on 23rd March, 2014. Though the applicant/accused was also prosecuted under Sections 143, 147, 148 and 149 of Indian Penal Code, the applicant/accused was not holding any weapon at the time of the incident. As per the postmortem report, the cause of death is due to stab injury to the heart(unnatural). Considering all the above circumstances, I am inclined to grant bail to the applicant/accused on the following terms and conditions:

- a) The bail application is allowed.
- b) The applicant/accused be enlarged on bail upon furnishing P.R. Bond in the sum of Rs. 50,000/- with one or two local solvent sureties in the like amount.
- c) He shall not tamper with the evidence and shall not pressurize the witnesses.
- d) He shall not indulge into any criminal activity, while on bail.
- e) He shall make himself available and attend all the Court dates regularly.

f) He shall not abscond and furnish his address to the police station along with address proof.

g) He shall not leave India without the prior permission of the Court.

h) Violation of any of the conditions imposed shall amount to cancellation of bail forthwith.

6. Bail application stands disposed of on above terms. In view of above, criminal application stands disposed of.

(MRIDULA BHATKAR, J.)