

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 401 OF 2016
IN
CRIMINAL APPEAL NO. 426 OF 2016

Rafiq Babulal Shaikh	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

Ms. Nagma Tandon, Advocate for the applicant.
Mrs. U.V. Kejriwal, APP for the respondent/State.

CORAM: **SMT. V.K. TAHILRAMANI &
MRS.MRIDULA BHATKAR, JJ.**
DATE: **JULY 4, 2016**

P.C. (Per Mrs. Mridula Bhatkar, J.)

This Application for bail is preferred by the applicant. By the judgment and order dated 4th November, 2015 passed by the Additional Sessions Judge, Pune, the applicant is convicted for the offence punishable under section 302 r/w. 149 of the Indian Penal Code and is sentenced to undergo imprisonment for life and to pay fine of Rs.5,000/-, in default to suffer R.I. for one year. He is also convicted under section 120B of Indian Penal Code and is sentenced to suffer imprisonment for life and fine of Rs.2,000/-, in default to suffer R.I. for one year.

2. The incident of assault has taken place on 22nd September, 2012 at about 7.30 p.m. and one Dayanand @ Deva Namdev Khandekar was assaulted by the accused with kicks, fists and stones while he was returning home. Thereafter Dayanand succumbed to the injuries when he was taken

to the hospital.

3. The learned counsel for the applicant has submitted that in all 6 accused were tried and all are convicted for the offence of murder. She pointed out that name of original accused no.1 is Rafiq Babulal Shaikh and name of original accused no. 4 is Rafiq Ibrahim Shaikh are quiet same. Both the accused are of 20 to 25 years age group and are residents of Pawannagar at Bibvewadi, Pune. The learned counsel submitted that one Rafiq Shaikh has assaulted the deceased with kicks and fists, however, one Rafiq Shaikh along with Mazhar Shaikh picked up a big stone and hit on the head of the deceased, which was a fatal blow. She, therefore, submitted that actually which Rafiq Shaikh has assaulted the deceased with stone on his head is not clear and, hence, the applicant be given benefit of doubt and he be granted bail.

4. Learned APP while opposing the Bail Application has pointed out that accused no. 4-Rafiq Ibrahim Shaikh @ Billa and the present applicant-Rafiq Babulal Shaikh was the one who lifted the stone and hit on the head of the deceased and due to that assault, deceased collapsed. The learned Sessions Judge has convicted the accused for committing murder of the deceased and, therefore, the applicant is not to be granted bail.

5. We have perused the relevant evidence of the witnesses. It is true that there are two Rafiq Shaikh, i.e., original accused nos. 1 and 4 and in the evidence of the witness, it is mentioned that one Rafiq Shaikh along with Mazhar has assaulted deceased with stone on his head and the said blow was fatal. However, we have not come across any evidence whether the witnesses have identified the accused Rafiq Shaikh as assailant, who gave fatal blow on the head. Moreover, both Rafiq's are of the age group of 20 to 25 years and they are residents of same locality. Their surnames are also same. Under such circumstances, we are of the view that this is a case wherein bail is to be granted. Therefore, we allow this Application and grant bail to the applicant. Hence, the following order:

- (i) The applicant to be released on bail on furnishing P.R. Bond in a sum of Rs.30,000/- with one or two sureties in the like amount.
- (ii) During the period that the applicant is on bail, he should report to the concerned police station once in a month.

6. The Application is disposed of in above terms.

(MRS. MRIDULA BHATKAR,J.)

(MRS. V.K. TAHILRAMANI, J.)