

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL BAIL APPLICATION NO. 1013 OF 2016

Prasad Balasaheb Pansare

... Applicant

Vs

The State of Maharashtra

... Respondent

...

Mr. Abhijeet A. Desai a/w Ms. Vrushali L. Maindad for the Applicant.

Ms. Veera Shinde – APP for the State.

CORAM : A. M. BADAR, J.

DATE : 16 JUNE, 2016

P.C. :

1 Applicant/accused in Crime No. 305/2014 with Police Station Hadpsar, Pune, registered at the instance of Shaikh Mobin Mohamd Sadik for the offences punishable under section 302, 307, 143, 147, 148 and 149 of IPC, by this application is seeking bail on completion of investigation.

2 Heard the learned counsel for the applicant, he argued that the informant who came on the spot after the assault is not an eye-witness to the incident and therefore there was no question of identification of the assailant by the informant. He further argued

that injured Ejaj Yakub Bagban was assaulted at some other place. Another injured Amin Shaikh appears to have been assaulted inside a shop and therefore evidence of identification of the applicant is of no value. He further argued that there is no incriminating recovery from the applicant. It was further argued that Police Officer who had not seen the incident are also naming some other person then the applicant and as such the applicant is required to be released on bail. As against this, the learned A.P.P. argued that informant Shaikh Mobin had identified the applicant as assailant. She further argued that police personal name Pandharkar and Gore have also named the applicant and therefore considered the nature of crime, the applicant is not entitled for bail.

3. The incident in question happened on 2nd June 2014. *Prima facie* it is seen from the P.M. report that Shaikh Mohsin Mohd. Sadik – brother of informant Shaikh Mobin died homicidal death.

4. Perusal of F.I.R shows that on 2nd June 2014, first informant Shaikh Mobin parted company of his brother Shaikh Mohsin (since deceased) and friend Riyaz Ahmed after offering

Namaz. Thereafter he received a call from his friend Riyaz that Shaikh Mohsin is assaulted by a mob of 20 people near grocery shop at Satav Plot area. The F.I.R reveals that it was thereafter the informant reached the spot by running and found his brother Shaikh Mohsin lying in injured condition with grievous injury. The F.I.R reveals that thereafter the first informant started shouting loudly for help and then one person called police control room by dialing 100. The F.I.R also reveals that at the time one another person was also being assaulted.

5 It is seen that in the assault near grocery shop at Satav Plot area, Shaikh Mohsin died whereas Amin Haroon Shaikh suffered injuries. Statement of Amin Haroon Shaikh shows that he was assaulted inside the shop of which he had taken shelter.

6 In identification pared, injured Amin Haroon Shaikh has not identified the present applicant. Informant Shaikh Mobin is stated to have identified the present applicant but no over bearing importance can be given to such identification, considering the nature of other evidence. Informant Shaikh Mobin had not seen

assailant of his brother. Injured Amin Shaikh, as stated, was assaulted inside the shop.

7 No weapon was recovered from the applicant and cloths seized from him where not having stains of any blood, as seen from C.A. report. Statement of police personal Pandharkar is not naming the applicant. The first name stated by this police personal is something different. Similar is the statement of another police personal Santhosh Gore. That apart, both of them have not seen the incident of assault.

8 In somewhat similar circumstances, this court had already granted bail to three of the accused persons and copy of the said order dated 21st April 2016 is enclosed to the application.

9 In this view of the matter and considering the nature of evidence available against the present applicant, though he is accused of the offence punishable with death or life imprisonment, he deserves to be released on bail and therefore the order.

i) The application is allowed.

ii) The Applicant/accused in Crime No. 305/2014 for

the offences punishable under Section 302, 307, 143, 147, 148 and 149 of IPC with Police Station Hadpsar, Pune, be released on bail on executing the P.R. bond of Rs. 10,000/- and on furnishing surety in the like amount.

- iii) The Applicant/accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of accusation against them so as to dissuade him from disclosing such facts either to the Court or to any police officer and that they shall not tamper with the evidence.
- iv) The Applicant/accuse shall co-operate the Investigating Officer and attend Police Station as an when reasonably called.
- (v) Applicant shall not commit an offence similar to the offence of which he is accused.

(A. M. BADAR, J.)