

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

BAIL APPLICATION NO.1096 OF 2016

Shaibaz Khalid Shaikh ... **Applicant**

V/s.

The State of Maharashtra ... **Respondent**

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Mr.S.V.Marwadi, i/b. Sharan Patole, Advocate for the Applicant.

Ms.S.S.Kaushik, APP for the Respondent/State.

Mr.A.B.More, PN/1339, Kasa Police Station.

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CORAM : P. N. DESHMUKH J.

DATED : 14th JULY 2016.

P.C.

1 Accused involved in Crime No.I-9 of 2016 registered by Kasa Police Station, District Palghar for the offences punishable under Sections 302, 201 read with Section 34 of the Indian Penal Code, had sought bail.

2 Heard the learned counsel for the parties. The learned counsel for the applicant at the outset submitted that applicant is falsely involved in this Crime, though deceased Aseem Rashid Shaikh had died of accidental death, while crossing the road as was given dash by heavy vehicle, which was proceeding from Mumbai to Gujrat Side. The learned counsel for the applicant to substantiate his case and to establish innocence of applicant has relied on the statements of witnesses filed along with the charge-

sheet and injuries sustained by the deceased, as are referred in the inquest panchnama and in the postmortem report. In the background of above stated evidence, the learned counsel for the applicant has, thus, submitted that applicant is entitled for bail.

3 The learned Additional Public Prosecutor has opposed the application on two counts, firstly on the ground that after the incident, applicant's case is that, he chased the vehicle, which has given dash to deceased, instead of providing treatment to injured by taking him to hospital and has, thus, contended that such conduct of applicant about his running away from the spot along with co-accused itself speaks in volume. It is, therefore, submitted that application be rejected on such doubtful conduct of applicant.

4 Perusal of statement of Neerav Rajendrakumar, the sole eye witness in this case clearly establish that deceased, at the material time, had sustained dash by vehicle proceeding from Mumbai to Ahmedabad, while he was crossing the road. According to the statement of eye witness though he has witnessed the dash given by vehicle, he could not note the registration number of luxury bus, however, could find that deceased was wearing light pink colour shirt.

5 Above statement of complainant *prima facie* find corroboration from the inquest panchnama wherein he specifically

stated that deceased was found having on his person light pink colour shirt.

6 On perusal of statement of Rashid Shaikh and Faymida Rashid Shaikh parents of deceased Aseem it is noted that on 22/01/2016 at about 10.00 a.m. father of deceased has received a phone call from one Nasir Shaikh, who informed that while their son deceased Aseem along with applicant Shaibaz and co-accused Viraj was proceeding towards Ahmedabad had met with an accident. On the same day in the afternoon, parents of the deceased learnt about the death of Aseem.

7 From further contents of their statements, it is revealed that on their enquiring with applicant and co-accused Viraj, they were informed that in the night of 21/01/2016, while they along with deceased were proceeding on motorcycle, near Khadkona village situated on Bombay-Ahmedabad, they stopped for urination, and when Aseem was proceeding by the road, he was dashed by one vehicle proceeding from Mumbai to Gujrat side.

8 In spite of getting this information from applicant and co-accused, father of the deceased suspected some foul play and, therefore, instructed his brother Iqbal to lodge report against the applicant and co-accused suspecting them to have killed the deceased. Accordingly, the offence, as aforesaid, came to be registered.

9 On considering statements of Satyawar Patil, Salam Shaikh and Sameer Shaikh, they supported the case of the applicant as all these witnesses have specifically stated, on their inquiring with applicant as well as co-accused to whom they had met in hospital, where deceased was initially carried out at Kasa, that they were informed that as deceased was proceeding by road to answer the nature's call, when he was accidentally hit by some vehicle causing his death.

10 Having considering the facts, as aforesaid, there is nothing to deny discretion by the relief of bail as claimed by applicant, as only conduct of applicant has set out by the prosecution, of their not providing medical aid to deceased after the incident, but to follow the vehicle, which has given dash, by itself is not sufficient to reject the application.

11 In that view of the matter, application is allowed as per following order.

- (i) Applicant shall be released on bail on his executing personal bond in the sum of Rs.25,000/- with one surety in the like amount.

- (ii) Applicant shall mark his presence with Kasa Police Station on 15th day in the alternate month pending trial and shall attend the trial Court on each date of hearing.

(P. N. DESHMUKH J.)