

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1156 OF 2016

MOHABBAT ALI SHAFIULLA SHAH)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA & ANR.)...RESPONDENTS

Mr.G.S.Hegde i/b. Mr.U.V.Singh, Advocate for the Applicant.

Mr.S.H.Yadav, APP for the Respondent - State.

CORAM : P. N. DESHMUKH, J.

DATE : 20th JULY 2016.

P.C. :

1 Applicant involved in Crime No.I-311 of 2015
registered with Shil Diaghar Police Station, District Thane, for the
offences punishable under Sections 302 and 504 read with Section
34 of Indian Penal Code has sought regular bail.

2 Heard learned counsel for both the sides. Perused the
2 copy of charge-sheet made available by learned APP.

3 According to learned counsel for applicant, though prima facie involvement of applicant Mohabbat Ali is seen in the present incident, from statement of witnesses on record, who are all eye witnesses, and from the medical evidence, it cannot be said that applicant had intention to commit murder of deceased Maqbool Khan and had further contended that since according to the case of prosecution, applicant along with co-accused had assaulted deceased by fist blows on his chest, case of applicant would not fall within the ambit of definition of murder, and has therefore contended that, since according to cause of death of deceased, it is stated that deceased died of shock due to blunt trauma to the chest involving heart in a patient suffering from chronic ischaemic heart disease, deceased died of said ailment suffered by him even prior to the incident. It is therefore prayed that applicant be released on bail pending trial, as case would fall under Part II of Section 304 of IPC.

4 Learned counsel for applicant has also contended that statements of Nasir Ali and Mumtaz Ali are contrary to the

statement of eye witnesses Arbaz, Imran, complainant, Akhil, Rizwan and Maqsood. It is also submitted that statement of Dr.Mohd.Wamik to whom deceased was immediately referred for medical treatment, does not implicate applicant as according to its contents, when deceased was referred to this doctor, accompanied by his sons, on enquiry by said Medical Officer, he was informed that deceased was attempting to rescue the quarrel between minor children arose on account of game of cricket, and had suffered giddiness and became unconscious. Doctor, thereafter, referred him to civil hospital. Relying on above evidence on record, it is thus prayed that application be allowed.

5 Learned APP opposed the application on the ground that there is direct evidence against the applicant and from the statements of eye witnesses, involvement of applicant as assailant of deceased is clearly established.

6 Perused the FIR lodged by Imran Maqbool Khan, son of deceased. It reveals that on the day of incident on 20th

December 2015, at around 11.15 hours, one Arbaz Khan informed him that two persons were quarreling with his father near tower in Ekta Nagar. Complainant, therefore, ran to this place and found applicant and co-accused Rizwan abusing his father, saying “maaro sale ko” having in their hands 3 to 4 feet long wooden logs. Complainant apprehending that applicant and co-accused may commit assault with these wooden logs on his father, snatched said wooden logs. At that time, applicant and co-accused assaulted Maqbool, the deceased, on his chest and abdomen by fist blows. On complainant raising shouts, his friends Akhil, Arbaz and brother Maqsood arrived and intervened. However applicant and co-accused continued their assault by fist blows due to which complainant's father fell down and was thus referred to Dr.Wamik.

7 From the FIR it reveals that complainant is an eye witness to the incident along with his friend Akhil and brother Maqsood. Statements of Akhil Ismail Tamboli and Maqsood Maqbool Khan when perused, corroborate the version of

complainant when they have stated that on their arrival on the spot, they found applicant on the spot committing assault on the chest and abdomen of complainant's father with fist blows, due to which he fell down and was thus carried to private hospital of Dr.Wamik.

8 Similar are the statements of Arbaz Khan and Rizwan Khan, the eye witnesses, when they have stated that at the time of incident, applicant and co-accused were armed with wooden log which were snatched by complainant and both the accused therefore committed assault on deceased on his chest and abdomen by fist blows, due to which deceased fell down and was referred to Dr.Wamik.

9 As contended on behalf of applicant, on perusal of statement of Nasir Ali Khan, it reveals that this witness has intervened in the quarrel, which has initially taken place between son of deceased with his friend on account of game of cricket, and after sometime on receipt of information from complainant about

his father having been involved in quarrel with the applicant and co-accused, he reached on the spot and found the deceased being assaulted by two persons. Nasir Ali has not named either the applicant or the co-accused as assailant except for stating that deceased was assaulted by two persons and has further stated that he is not aware as to who assaulted whom.

10 Similarly, from the statement of Mumtaz Ali though he has come out with a different story with reference to the incident of assault on deceased when he has stated that on his arrival at the spot, co-accused assaulted deceased by giving blows and has further stated that applicant was armed with wooden log. He is silent on the count of applicant assaulting deceased by fist blows. As such, from the statement of this witness, though presence of eye witnesses Arbaz, Imran, Akhil and Maqsood is established, statements of Nasir Ali and Mumtaz Ali appears to be contrary to the eye witness account, particularly, on the count of assault by applicant.

11 In the light of above facts, I find much substance when it is contended on behalf of applicant that no satisfactory reason is put forth by prosecution for non-disclosure of assault by applicant to the doctor immediately after the incident to whom he was referred first in the point of time. On bare perusal of statement of said doctor it reveals that after incident at around 12 noon, deceased Maqbool was taken to the hospital by his son and on his enquiry by the doctor as to what had happened, doctor was informed by complainant that their father had felt giddiness while he went to separate the quarrel involving small children while playing cricket, and at that time, he fell down and became unconscious. It is to be noted that, had applicant committed assault on Maqbool, as is the case of prosecution, there was no reason for said son of deceased to not to disclose his name to the doctor, who according to his statement appears to be family doctor of deceased and is like a family member.

12 In the background of evidence as aforesaid and on perusal of postmortem report since it further appears that

deceased had sustained three external injuries in the form of scratch on left leg, abrasion on left hand and left forearm and having considered the probable cause of death of deceased that deceased died of shock due to blunt trauma to the chest involving heart in a patient suffering from chronic ischaemic heart disease, prima facie it appears that the case of applicant would not come within the ambit of Section 302 IPC, but may fall for lessor offence.

13 In that view of the matter and since the investigation is over, I find no reason to keep the applicant behind bar. Application is thus allowed as per order below :

- i) Applicant shall be released on bail on his furnishing P.R.Bond in the sum of Rs.50,000/- with one or two sureties in like amount.
- ii) Applicant while on bail shall mark his presence to Shil Diaghar Police Station, District Thane, on first day of each month, pending trial.

iii)Applicant shall not tamper with the witnesses and shall attend the dates before the trial court without fail.

iv)Needless to state the learned trial court shall not get influenced with the observations as aforesaid, and shall independently decide the case on merits.

(P. N. DESHMUKH, J.)