

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1405 OF 2015

Rahemat Yusuf Pathan	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

Mr. Prashant Gurav, Advocate for the applicant.
 Ms. A.T. Javeri, APP for the State.
 Mr. D.R. Bhoi, Bazar Peth Police Station, Kalyan present.

CORAM: **MRS.MRIDULA BHATKAR, J.**
 DATE: **6th April, 2016.**

P.C.:

This Bail Application is moved by the applicant/accused, as he is prosecuted for the offences punishable under sections 302, 201 r/w. 34 of the Indian Penal Code and under sections 3(1), 3(2) and 3(4) of MCOC Act in C.R. No. 65 of 2012 registered with Bazar Peth Police Station, Kalyan.

2. It is the case of the prosecution that deceased Haris was working as a driver with the applicant/accused and his brothers. The applicant/accused and his brothers are in the business of purchase and sale of charas contraband. They suspected that deceased Haris, had stolen some bags of charas and therefore, they called him on 12th February, 2012 in the afternoon from his house. Harris left home. As per the case of the prosecution, while leaving home, Harris told his mother that he was going to Barkatbhai, brother of applicant/accused. She saw that the car by which

her son went away was driven by Amjad Yusuf, other brother of the applicant/accused. As Harris did not return home till 11 p.m., she phoned applicant/accused twice, however, he told that he was not aware. Then she gave complaint to the police station about her missing son. Again she again phoned applicant/accused to know about the whereabouts of her son but he fanned ignorance. However, he was informed by one Ismail Maulvi that applicant/accused and other two accused have killed her son, burnt his body and disposed of. She tried to find out her son but did not find it. The police found the body in half burnt condition and reported her. She could not identify the body. However, DNA report was called by the prosecution of the burnt body and it confirmed the identity of Harris. Pursuant to the registration of the offence, applicant/accused was arrested on 8th March, 2012 and since then he is in custody. Hence, this Bail Application.

3. The learned counsel for the applicant/accused has submitted that the applicant/accused is innocent and he has not committed any crime much less the crime of murder and under MCOC Act. He further submitted that there is no evidence against the applicant except the confession statement of one Baban Wani, who has not stated anything against the applicant. Therefore, he prays for bail.

4. Learned APP opposed the Application. She submitted that the applicant/accused was present when Harris was assaulted by the co-accused. She produced the statements of two witnesses on this point. She further submitted that the applicant/accused is involved in sale and purchase of charas and as on today, 9 cases are pending against the applicant/accused. She relied on the affidavit of Investigating officer Mahesh Dharmaraj Chimate dated 9th February, 2016. She further submitted that the applicant/accused was encouraging the co-accused to assault Harris. She further submitted that this Court has rejected the Bail Application of co-accused Hanif Shaikh on 4th September, 2015 as similar role was attributed to him by the witnesses. The applicant/accused have tried to pressurize the complainant. Hence, no bail is to be granted to the applicant/accused.

5. Perused the FIR, statement of two witnesses which are relied by learned APP. In the statements of these two witnesses, the name of applicant/accused is taken that he was present at the time of actual assault. He was encouraging other assailants to beat the deceased. Moreover, the mother of the deceased has stated that she found one bag of charas in the house and her son got addicted to charas because of availability of the same at the workplace where deceased was working as a driver. Thus, the

prosecution has shown the motive and prima facie there is evidence that the applicant/accused and his brothers were in the business of sale and purchase of charas. The applicant/accused might not have actually assaulted the deceased, however, after the assault, body of the deceased was burnt and prima facie also has committed an offence under section 201 of Indian Penal Code. They are facing charges under MCOC Act. If the applicant is released on bail, he is likely to pressurize and terrorize the complainant and witnesses. This is not a fit case to grant bail. Hence, the Application for bail is rejected.

(MRIDULA BHATKAR, J.)