

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1283 OF 2016

ASHFAQUE ALAM SHAMSUDDIN KHAN)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.S.S.Khan, Advocate for the Applicant.

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

PI. Ravindra D. Hobale, Shivaji Nagar Police Station, present in court.

CORAM : P N. DESHMUKH, J.

DATE : 11th AUGUST 2016

PC. :

1 Applicant Ashfaque Alam Shamsuddin Khan alias Babbu apprehends arrest in Crime No.54 of 2016 registered with Shivaji Nagar Police Station, on 30th January 2016, which was initially registered for the offences punishable under Sections 307, 323, 506(II) read with Section 34 of the IPC and after the death of deceased, Shakib Khan on 24th February 2016, offence punishable under Section 302 came to be added in the crime, as his name is shown as one of the wanted accused. Perusal of copy of charge-sheet reveals that apart from applicant, two more accused are shown as wanted and six unknown accused are shown as absconding.

2 Learned counsel for applicant has submitted that in the entire charge-sheet there is absolutely no involvement of applicant except in the subsequent statement of brother of deceased and his mother which are recorded after about one month from the date of incident and in one of the statement of neighbour. However, from the nature of involvement also, it cannot be said that applicant was instrumental in commission of assault on deceased in any manner.

 Learned APP has not disputed above aspect, however, has submitted that there are three cases registered against applicant and has opposed the application on the ground that applicant is a criminal element.

3 Perused the charge-sheet. From the report lodged by Ashfaque Alam Khan dated 30th January 2016, involvement of co-accused Shaukat, Ashraf, Sakir and Sameer is established. However, there is no whisper against applicant establishing his involvement in the assault on the deceased namely Saquib Khan. According to the report, Saquib Khan came to be assaulted by above named accused persons on 29th January 2016 at around 9.30 p.m.

4 Similarly, subsequent statement of complainant Mohd.Wasim Qureshi is recorded on 29th February 2016 wherein no name of applicant is mentioned, nor there is any whisper against said applicant. In that view of the matter, it is found that till 29th February 2016, there was no involvement of applicant in the said crime.

5 It is material to note that statement of deceased Saquib Khan is recorded by police when he was admitted in hospital on 31st January 2016. Said statement is similar to the contents of report lodged by Mohd.Wasim Qureshi. As such, deceased in his statement has also not referred applicant in any manner.

6 On perusal of further document filed in the charge-sheet, it however appears that it is only on the subsequent statement of brother of deceased namely Abid Khan and mother Asma Khan, they had involved applicant. On perusal of their statement even otherwise, it is found that the involvement of applicant is by way of his alias name i.e. "Babbu" who is stated to have informed to the brother and mother of deceased to not to name co-accused Shaukat or Ashraf before police while they were to proceed to lodge report against them, as on 18th January 2016 co-accused had broken vehicles in the lane while abusing deceased Saquib. Apart from above, further contents of their statement reveal that on 27th January 2016 deceased had received a phone call from someone informing that applicant who is named as "Babbu" along with Shaukat and 7/8 associates were likely to commit assault upon him. Admittedly, there is no investigation carried out on this aspect as no call detail records are collected, nor is there any reference of any telephone number from which such call was made or received.

7 Considering statement of brother and mother of deceased as aforesaid, and more particularly, having considering the fact that in their initial statements which were recorded on 31st January 2016 and 1st February 2016 respectively, there was no allegation against the

applicant in any manner. However, in their subsequent statement dated 29th February 2016 which are recorded after a period of about one month from the date of incident, they have alleged as aforesaid against the applicant.

8 Similarly, from the statement of Mohd. Afaque Ansari, who appears to be neighbour of the deceased, there is a stray reference made by this witness involving applicant to have said accused Shaukat that “साकीबका हाथ नहीं तो पैर निकालो, ह त्या र मै देता हु”. Again it is material to note that statement of neighbour is recorded more than one month after the incident i.e. on 2nd March 2016.

9 Considering the nature of involvement of applicant as aforesaid, and having considering the fact that no name of applicant is mentioned in the FIR, nor in the subsequent statement of complainant and as no role is attributed to applicant in the statement of brother and mother of deceased, nor by deceased in his statement, but the involvement appears only on the basis of subsequent statements of mother, brother and neighbour as aforesaid, which are recorded one month after the incident, applicant has made out a case for grant of anticipatory bail. In the circumstances, application is allowed as per order below :

- i) In the event of arrest of applicant in Crime No.54 of 2016 registered with Shivaji Nagar Police Station, he shall be released on bail on his executing P.R. Bond in the sum of Rs.30,000/- with one or two sureties in like amount.

- ii) While on bail, applicant shall attend Shivaji Nagar Police station as and when called and shall not tamper with the witnesses.

(P. N. DESHMUKH, J.)