

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

CRIMINAL BAIL APPLICATION NO. 1596 OF 2016

Shoab Shabbir Shaikh. ... Applicant.

Versus

The State of Maharashtra. ... Respondent.

Mr. Vijay Pamnani, advocate for Applicant.

Mr. Makrand Bakare, advocate for intervenor.

Mr. Y.M. Nakhwa, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J

DATE : SEPTEMBER 19, 2016

P.C.:

1 Heard the learned Counsel for the applicant and the learned APP for State. Perused the papers.

2 This is an application under Section 439 of the Code of Criminal Procedure, 1973. The applicant herein is arrested on 22/8/2015 in Crime No. 190 of 2015 registered at Sangvi Police Station, Pune for

offence punishable under Section 143, 147, 148, 149, 302 of the Indian Penal Code. Investigation is completed and charge-sheet is filed. At this stage, the learned APP submits that the trial has commenced and charge has been framed.

2 It is the case of the prosecution that on 26/6/2015 Phiroz Shaikh lodged first information report alleging therein that on that day owner of saloon namely Isaq Amin Shaikh informed him telephonically that his father had been to saloon for hair cut and there was an assault upon him. The first informant rushed to the saloon and he had taken his father to Max Neuro Hospital, Kasarwadi, Pune. Therefrom he was directed to Y.C.M. Hospital, Pimpri, where his father was declared dead. It is admitted by the first informant that his father is an estate agent and is working as such for the last 15 years. That there was a dispute between Shabbir Shaikh, Kayum Shaikh, his sons and the father of the first informant over the same land situated at Pimple Gurav. That he had received threat from Shabbir Shaikh and his five sons including present applicant of dire consequences.

3 On 1st July, 2016 investigating officer had recorded statement of the owner of the saloon namely Isaq Shaikh. He had categorically stated that on that day, the father of the first informant had appointment at the saloon. He had come to the saloon for hair cut. That after he had completed shave of the customer i.e. deceased suddenly five persons entered into the saloon. He was well-acquainted with the said five persons. They were armed with deadly weapons. Tariq shaikh i.e. brother of the present applicant had mounted assault upon the victim. Thereafter, the applicant and others had also assaulted the victim with deadly weapons on his head, chest, etc. The owner of the said saloon had identified the present applicant as he was acquainted with him. The cause of the death is multiple chopper wounds.

4 The learned Counsel for the applicant submits that the applicant had been falsely implicated since brother of the applicant had filed public interest litigation in this court, which was registered as PIL No.

186 of 2014. He had brought the illegal construction of the deceased to the notice of the court. According to the learned Counsel for the applicant, this was the reason for falsely implicating the entire family of the applicant.

5 The learned Counsel has drawn attention of this Court to the order passed by the Hon'ble Division Bench dated 31/8/2015 wherein the designated officer of the concerned ward was directed to visit the site to ascertain whether the construction is carried on in accordance with law and in the eventuality, if the designated officer of the concerned ward find that the building is unauthorised, the same may be demolished. The order is dated 31/8/2015, whereas the father of the first informant had died a homicidal death in the month of June, 2015 itself.

6 Needless to say that as on today, there is direct evidence against the applicant. The ocular evidence would prevail over circumstantial evidence. The learned Counsel for the applicant submits that once a

public interest litigation was filed, there was no reason for causing homicidal death. However, the motive cannot be considered at this stage. Ocular evidence would prevail in all circumstances. Hence, application being sans merits deserves to be rejected.

7 The application stands rejected and disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)