

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1457 OF 2015

IN

CRIMINAL APPEAL NO.802 OF 2015

1) Husain Maqbul Shaikh
Age-32 years, Occ-Business,
R/o. Haldi Mohalla, Shirur,
Taluka-Shirur, District Pune
(Yerwada Central Jail)

2) Shakur Rajjak Shaikh
Age- 25 years, Occ- Business,
R/o. Haldi Mohalla, Shirur,
Taluka-Shirur, Dist.Pune
(Yerwada Central Jail)

...Applicants

Versus

The State of Maharashtra

...Respondent

Mr. B.D. Joshi i/b. Mr. Pankaj R. Manohar for the Applicants.
Smt. V.R. Bhonsale, APP for the Respondent -State.

**CORAM: SMT. V.K. TAHILRAMANI &
SMT. ANUJA PRABHUDESSAI, JJ.**

DATED : 22nd March, 2016.

ORAL ORDER [PER : SMT. ANUJA PRABHUDESSAI, J.]:

By this application the Applicants, the original accused Nos.2 and 3 seek suspension of substantive sentence of imprisonment and enlargement on bail pending the decision of the appeal.

2. The Applicants have been convicted for offence under section 302 r/w. 34 of the IPC and are sentenced to undergo imprisonment for life and to pay fine of Rs.2000 i/d. to undergo rigorous imprisonment for one year.

3. Mr. B.D. Joshi, the learned counsel for the Applicants has submitted that there was delay of 5 to 6 hours in lodging the FIR. He has further submitted that the prosecution has not proved the motive. The learned counsel for the Applicants has further stated that the alleged recovery is from open space and hence cannot be relied upon. He further contends that the co-accused has been granted bail. He therefore claims that the Applicants are also entitled for bail during the pendency of appeal.

4. Smt. V.R. Bhonsale, learned APP for the Respondent -State submits that there is prima facie material on record and prove the involvement of the Applicants in the crime and hence, the Applicants are not entitled for bail.

5. We have perused the records and considered the submissions advanced by the learned counsel for the Applicants and the learned APP for the Respondent -State. The testimony of PW1- Chiraguddin Husnuddin Madari reveals that on 14.2.2011 at

about 11.00 a.m. there was an altercation between the Applicant No.2 and one Barkat Haider Madari. His brother Shabbir and others had intervened and pacified them and thereafter they had disbursed from the place of the incident. Testimony of PW1, PW2 and PW3 reveals that on the same day, the Applicants alongwith others came armed with weapons and assaulted Shabbir Madari. The testimony of these witnesses indicates that the Applicant No.1 Husain Maqbul Shaikh had instigated the other co-accused and told them to murder him. The testimony of PW 1 further reveals that the Applicant No.1 Husain and the other co-accused had caught hold of Shabbir and the Applicant No.2 had stabbed Shabbir on his chest by means of a sharp weapon. His testimony further indicates that the Applicant No.1 had given a blow of wooden stick on the head of Didar.

6. Shabbir and Didar were shifted to Manikchand hospital. Upon examination, said Shabbir was declared dead. The evidence of PW10 Dr. Shivaji Gangaram Zarekar vis-a-vis the post mortem report reveals that said Shabbir had expired due to hemorrhagic shock due to the stab injury to the heart. The testimony of PW-10 reveals that on the same day he had examined PW-3 Didar Fakir Madari and said Didar had contused lacerated wound over the upper part of the occipital region of head. The medical evidence

thus, prima facie corroborates the testimony of PW-1, PW-2, PW-3 the injured witness, PW-4 and PW-5.

7. It is pertinent to note that the co-accused Majhar Shaikh was released on bail as the eye witness had not attributed any specific role to the said co-accused. The witness PW-3 and PW-4 had also stated that the said co-accused was not armed with any weapon. The Applicant is therefore not entitled for bail on the ground of parity.

8. Upon examination of the evidence on records, we find that there is strong prima facie material, which connects the Applicants with the commission of the crime. In the light of such evidence, we are not inclined to suspend the substantive sentence and enlarge the Applicants on bail.

9. Under the circumstances and in view of discussion supra the application is dismissed.

(SMT. ANUJA PRABHUDESSAI,J.) (SMT. V.K. TAHILRAMANI,J.)