

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 2374 OF 2015

Arif Adam Ali Shaikh and anr. ...Applicants.
vs.
The State of Maharashtra. ...Respondent.

Mr. Husen Shaikh for the Applicant.
Smt. M.H.Mhatre, APP. for the State.

CORAM : A.S.GADKARI, J.
DATE : 17th February, 2016

P.C.

This is an application under Section 439 of the Code of Criminal Procedure. The applicant is seeking bail in CR No.93 of 2015 dated 12.3.2015 registered with Ghatkopar Police Station, Mumbai under Sections 307, 324, 143, 144, 147, 149 of the I.P.C. and Section 37 (1)(3) read with Section 135 of the Bombay Police Act.

2) It is the prosecution case that Bibi Fatima was having affair with the witness Jafarali Kadarali Sayyad. The family members of accused No.2 Bibi Fatima were against the said affair. That, due to the said affair there were earlier altercations between the family of the applicants and the family of Jafarali Sayyad. That, 4 to 5 days prior to the date of the incident i.e. on 12.3.2015 the deceased had altercations with the applicant No.1 and his brothers. Therefore, the deceased Imtiyaz had lodged complaint with the police station.

It is the prosecution case that on 12.3.2015 between 1.45 p.m. to 2.00 p.m. the accused persons assaulted the deceased Abdul

Imtiyaz Salam Khan @ Raju. It is the further prosecution case that the co-accused Gulzar @ Chand Adam Ali inflicted a blow with a knife on the person of deceased Abdul Imtiyaz. That, the said victim Abdul Imtiyaz @ Raju succumbed to the injuries. After investigation the police have filed the charge sheet.

3) Heard the learned counsel for the applicant and the learned APP. I have perused the copy of the charge sheet annexed to the application. The learned counsel for the applicants submitted that he is not pressing the present application qua the applicant No.1 and pursuing the present application with respect to applicant No.2 Smt. Sabira Adam Ali Shaikh-mother of applicant No.1.

4) It appears from the record that the role attributed to the present applicant No.2 by the Investigating Agency is that the applicant threw chilly powder in the eyes of deceased Abdul Imtiyaz Salam Khan @ Raju and other accused persons assaulted the deceased. It is to be noted here that the witness namely Jafar Ali Kadarali Sayyad in his statement has categorically stated that the sister of Chand namely Fatima -Applicant No.2 threw chilly powder in the eyes of deceased Imtiyaz @ Raju. The statement of other witnesses namely Smt. Naina Banu Abdul Khan and Mr. Iqbal Ashpak Sha reveals that the Applicant No.2 was holding a plastic carry bag containing Chilly powder. The witnesses namely Nasruddin Kureshi and Abdul Gafar Khan in their statements have stated that the accused No.2 Smt. Fatima has thrown chilly powder in the eyes of the deceased Imtiyaz. Thus, as far as present applicant No.2 is concerned, the only role as has been attributed by the witnesses namely Smt. Nainabanu Adbul Khan and Iqbal Ishpak Sha

is that the applicant No.2 was holding a plastic bag containing chilly powder. Prima facie, it appears that there are material contradictions in the statements of the witnesses and in the statement of Abdul Gafar Khan.

5) In view of the above, the applicant No.2 has made out a case for grant of bail.

Hence, the following order.

ORDER

- a) The application of applicant No.1- Arif Adam Ali Shaikh is hereby dismissed as withdrawn.
- b) The Applicant No.2 Sabira Adam Ali Shaikh be released on bail in Cr No.93 of 2015 registered with Ghatkopar Police Station, Mumbai on her furnishing PR bond of Rs.25,000/- with one or two solvent local sureties in the like amount.
- c) After her release from Jail the applicant No.2 shall attend all the Trial Court on all the dates.
- d) The applicant shall not tamper with the evidence and or influence the prosecution witnesses.
- e) Application is partly allowed in the aforesaid terms.