

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

CRIMINAL BAIL APPLICATION NO. 2445 OF 2015

Mohd. Ismail Mohd. Sharif ..Applicant

v/s.

The State of Maharashtra. ..Respondents

Mr. N.R.Bubna for the Applicant

Mrs. Veera Shinde, APP for the Respondent-State.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : FEBRUARY 08, 2016.**

P.C.

1. This is an application for bail filed by the aforesaid applicant who has been arrested in C.R.No. I-51 of 2015 registered at Malegaon City Police Station for offences punishable under Section 302, 120 (b) R/W. 34 of the Indian Penal Code.

2. The case of the prosecution in brief is that on 20.7.2015 the applicant along with other co-accused committed murder of Mohd. Arif. The crime was registered pursuant to the FIR lodged by Tarannum Mohd. Arif, wife of the deceased. The applicant was

arrested on 20.7.2015. The crime was investigated and upon completion of investigation, the chargesheet was filed against the applicant and the other co-accused before the JMFC, Court No.5, Malegaon. The applicant herein had filed the bail application before the Sessions Court at Malegaon. The same came to be rejected by the Addl. Sessions Judge, Malegaon, vide order dated 2.11.2015.

3. Mr.Bubna the learned counsel for the applicant submitted that there is no prima facie material to show the involvement of the applicant in committing the said crime. He has further stated that the applicant and the deceased were friends and the material on record indicates that after the incident, the applicant had himself accompanied the deceased to the hospital. He has further stated that the FIR lodged by the wife of the deceased does not indicate that the applicant was involved in committing the murder of the deceased Arif. He therefore contends that the applicant is not involved in the said crime and is therefore entitled for bail.

4. The learned APP submits that there is prima facie material on record to show that before the said incident, the applicant and the other co-accused had hatched a conspiracy and in furtherance thereof

the applicant and the other co-accused had committed murder of Arif. She has further stated that the statements of the witnesses prima facie show that the deceased had told them that the applicant was involved in inflicting injuries. The learned APP has further submitted that one of the Bally (wooden stick) as well as blood stained clothes have been recovered at the instance of the applicant. The learned APP therefore claims that the said incriminating material prima facie proves the involvement of the applicant in the said crime.

i

5. I have perused the record and considered the submissions advanced by the learned counsel for the applicant and the learned APP for the State. The records prima facie indicate that on 19.7.2015 while the deceased and his wife Tarannum had gone for a fair, the deceased had received several phone calls from the applicant Ismail asking him to come near a Marathi School at Mahesh Nagar, Khaddajin. She has stated that her husband dropped her at home at about 9.45 p.m. He told her that the applicant and the co-accused were calling him. The deceased therefore went to meet the applicant and Jaju and told the complainant that he would return

soon.

6. The complainant has stated that at about 10.50 p.m. she phoned her husband at which time her husband told her that he was assaulted at Marathi School and the assailants have broken his hands and legs. She therefore went to the place of the incident. She saw her husband was lying in injured condition, and she took her husband to the hospital. She has further stated that her husband had told her that Javed @ Bobdya, Bablu vald Tape Dada had assaulted him by wooden sticks and that the applicant, Jaju and their other friends had assisted them. Her husband expired on 20.7.2015 at about 4.45 a.m. The postmortem report reveals that the deceased had sustained six fractures and multiple contusions . The postmortem report prima facie reveals that the deceased was brutally assaulted and that his death was homicidal.

7. The FIR prima facie reveals that the applicant had called the deceased to the place of the incident. The FIR also prima facie reveals that the applicant was present at the place of the incident when the complainant had reached the place of the incident. The FIR also reveals that the deceased had told the complainant that the

applicant had assisted the assailants who had inflicted injuries on him.

8. The statement of Shaikh Shakir Shaikh Asif also prima facie reveals that on 19.7.2015 Babloo and Javed were talking about getting rid of Arif. His statement further stated that he had heard Javed telling Babloo to phone the applicant Ismail and ask whether they had come to the Marathi school. He had also heard Babloo telling Javed that Arif would come to know if they phone him directly and that they should wait for the phone call of Ismail, the applicant herein. The aforesaid statement also prima facie shows that the co-accused Babloo and Javed as well as the applicant had entered into a criminal conspiracy to call the deceased to the primary school and thereafter to assault him.

9. The statements of Faridbanu Zakir Husain and Khaldabanu Ahmed also prima facie indicate the involvement of the applicant in commission of the aforesaid crime. The material on record prima facie reveals that while the applicant was in custody, a wooden stick used a weapon of offence as well as the blood stained clothes of the applicant were recovered pursuant to the disclosure statement made

by the applicant.

10. The aforesaid incriminating circumstances prima facie prove the involvement of the applicant in the aforesaid crime which was pre-planned. The offence is of serious nature and the gravity of the offence would not justify bail. The fact that the applicant had accompanied the deceased to the hospital is not a ground to disbelieve the statements of the aforesaid witnesses. The trial has not yet commenced and the witnesses who are from the same locality are yet to be examined. The possibility of the applicant interfering with the witnesses cannot be ruled out. Hence the release of the applicant will hamper the trial.

11. Under the circumstances, and in view of the discussion supra, the applicant is not entitled for bail. The application is dismissed.

(ANUJA PRABHUDESSAI, J.)