

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1314 OF 2017

- 1) Mujahid @ Mujju Mahamad Husaini
@ Baba Kadri @ Babu Miya Sayyed
- 2) Aslam Miya @ Salman Rashid Shaha ...Applicants
- versus
- The State of Maharashtra ...Respondent

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Advocate for Applicants : K.T. Jamadar
APP for Respondents: Mr. A.P. Basarkar
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CORAM : V. K. JADHAV, J.
DATED : 21st AUGUST, 2017

PER COURT:-

1. This is an application for getting released on bail in connection with crime No. 162 of 2016 registered with Nilanga police station, Tq. Nilanga, District Latur, for the offences punishable under Sections 302, 201, 397, 120-B of I.P.C. and Section 3, 25 of the Indian Arms Act and Section 3(1)b/181 of the Motor Vehicles Act. His application Exh.6 in Sessions Case No. 1 of 2017 with similar prayer came to be rejected by the learned Additional Sessions Judge, Nilanga.

2. Brief facts giving rise to the present application are as follows:-

On the basis of complaint lodged by Vijaykumar Moholkar,

father of deceased, the aforesaid crime came to be registered. Deceased Dinesh was working in the night shift in the hospital of Dr. Kudumbale at Nilanga. On 18.8.2016, as usual, elder brother of deceased Dinesh viz. Manoj dropped Dinesh in the said hospital. However, on 19.8.2016 at about 7.30 a.m. when Manoj, brother of deceased Dinesh, went to the hospital, deceased Dinesh was not found in the hospital. He learnt from the hospital staff that on earlier day, deceased Dinesh left the hospital on motor bike alongwith some persons. On 21.8.2016, deed body of Dinesh was found in Laltekdi area of Nilanga. During the course of investigation in all four accused persons came to be arrested, including the present applicant and on completion of investigation, investigating officer has submitted the charge sheet.

3. Learned counsel for the applicants submits that there is no direct evidence in this case and there is also no chain of circumstantial evidence against the applicants. The investigation is completed and the charge sheet has been submitted against four accused persons. As per the charge sheet, one Govind @ Ambadas Rameshwar Shinde, has lastly seen the deceased in the company of the applicant No.2 and co-accused Sadik Pathan. The said co-accused Sadik Pathan came to be released by this Court by order dated 7.8.2017. Learned counsel submits that the present applicants may also be

released on bail on the principle of parity.

4. Learned A.P.P. has strongly resisted the application on the ground that, there is prima facie evidence about homicidal death of deceased Dinesh. So far as the co-accused Sadik Pathan is concerned, during the course of investigation, nothing was recovered at his instance and he was released on bail by this Court on the ground that there is only evidence of last seen against him. So far as the present applicants are concerned, weapons, blood stained clothes came to be recovered at their instance and also mobile of deceased Dinesh came to be recovered at the instance of applicant No.2 Aslam. Thus, there is other connecting evidence against the applicants. As per the postmortem notes, there are injuries on vital organs. Thus, the application is liable to be rejected.

5. On perusal of charge sheet, so far as co-accused Sadik Pathan is concerned, it appears that there are no other circumstances to show his involvement in the alleged crime except the last seen theory. So far as the present applicants are concerned, on perusal of charge sheet, it appears that at the instance of applicant No.1 Mujahid @ Mujju a big knife having blood stains on blade came to be recovered. Furthermore, his blood stained pant and mobile having certain incriminating call record also came to be recovered at his instance. Similarly, at the instance of applicant No.2 Aslam, his blood stained clothes, the mobile

of deceased Dinesh and also weapon fighter came to be recovered at his instance under panchnama drawn in terms of provisions of Section 27 of Indian Evidence Act. It further appears from investigation papers that both the applicants have sustained injuries as per the injury certificates and age of the injuries was 8 to 9 days. The case of the present applicants is substantially different than the co-accused Sadik Pathan. Prima facie, there is strong case against the present applicants and thus they are not entitled to be released on bail on the principle of parity.

6. In view of above, application deserves to be rejected and it is accordingly rejected.

(V. K. JADHAV, J.)

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