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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 347 OF 2017

Gulam Mohamad Sayed Kirkire

..Applicant.

Vs.

The State of Maharashtra

..Respondent

Mr. Niranjan Mundargi i/b Vikram Sutaria for Applicant.
Mr.Arfan Sait APP for State.

CORAM: A.S. GADKARI, J.

DATE : 11th April 2017.

P.C.

1] This is an application under Section 439 of Cr. P.C. for bail in CR No.28 of 2016 dated 29.01.2016 registered with Mahim Police Station, Mumbai under Sections 302, 143, 144, 147, 148, 149 of the Indian Penal Code

2] It is the case of the prosecution that on 29.1.2016, Iqbal Sattar Shaikh lodged a report at the police station alleging therein that on the said day, they had been to Memon Hall as there was a marriage of their relative.

Just near the venue at Afzal Tea House, Muzzamil was allegedly staring at Asif @ Bada Papa. He had questioned the said gesture. There was a verbal altercation between both of them. At about 5.25 p.m. Asif had informed the first informant that he was going to offer prayers at the mosque. Within no time the first informant had seen a crowd, he ran towards the crowd and there he saw that Asif @ Bada Papa had fallen in a pool of blood. He was taken to the hospital. According to the prosecution, the applicant No.1 had assaulted Asif on his back with sticks and the applicant No.1 Smt. Bilkis Gulam Kirkire was carrying a knife with him, his father had snatched the knife from the applicant No.2 Muzzamil M. Kirkire and assaulted Asif on his neck. Asif had succumbed to the injuries. The body was sent for autopsy. Column No.17 of the post-mortem notes would indicate that the deceased Asif had sustained a CLW measuring 6 cm x 2 cm x 6 cm over left neck region 1 cm below left angle of mandible, margins sharp, the internal jugular vein was cut on left side and there was a fracture C5 and C6 vertebrae. The other 3 injuries were in the nature of abrasion on left knee and dorsum of right hand.

3] The role attributed to the present applicant is that, he along with co-accused Bilkis Gulam Kirkire and Javed Kirkire assaulted Asif @ Bada Pala with bamboo sticks. This Court by an Order dated 19.1.2017 has

granted bail to the co-accused Bilkis Gulam Kirkire. The learned additional Sessions Judge, Greater Mumbai by an Order dated 24.2.2017 granted bail to the co-accused Javed Kirkire. The co-accused Bilkis Gulam Kirkire and Javed Kirkire have been attributed with same and similar role as attributed to the applicant. This Court while dealing with the bail application preferred by the said Smt. Bilkis Gulam Kirkire and Muzzamil Kirkire in para-5 has held that, the postmortem notes do not indicate specifically that the deceased has sustained any injury by stick. As stated earlier, the role attributed to the present applicant is that, he assaulted deceased along with other accused persons with bamboo sticks. It is to be noted here that, the applicant has been arrested on 30.1.2016 and he is of 70 years of age as of today.

4] After taking into consideration the fact that similarly situated two other accused persons have been released on bail, the principle of parity squarely applies to the present applicant. In view thereof, I am inclined to grant bail to the present applicant on the ground of parity.

Hence, the following Order:

(i) The applicant be released on bail in CR No.28 of 2016 dated 29.1.2016 registered with Mahim Police Station, Mumbai on his furnishing PR bond of Rs.25,000/- with one or two local sureties in the like amount.

(ii) The applicant shall attend all the dates before the Trial Court.

(iii) The applicant shall not tamper with the evidence and/or influence the prosecution witnesses.

5] The Application is allowed in the aforesaid terms.

(A.S. GADKARI,J.)