

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

CRIMINAL BAIL APPLICATION NO. 844 OF 2017

Yusufali Mohammed Sajida ...Applicant

Versus

The State of Maharashtra ...Respondent

Mr. Prashant Pandey for the applicant.
Mr M. G. Patil, APP for the respondent – State.
PI S. M. Jadhav, Dindoshi Police Station present.

CORAM : PRAKASH D. NAIK, J.
DATE : 19 JULY, 2017

P.C. :

1. This an application for bail in connection with C. R. No.497 of 2014 registered with Dindoshi Police Station, Mumbai for offence under sections 302, 323, 324, 506(II), 143, 144, 147, 148, 149, 201 of IPC alongwith sections 4, 27 of Arms Act. The applicant was arrested on 22nd October, 2014.

2. The prosecution case is as follows;

a) The FIR was lodged by Rajesh Jadhav vide CR No.497 of 2014. On 21st October, 2014, the complainant noticed that his neighbours, namely Jayesh Trivedi, Hitesh Trivedi and their mother Daya Trivedi were being assaulted by Sohail Ansari, Yusuf Sajida, Imran Kazi and

Shahrukh. Sohail was assaulting Hitesh by iron rod.

(b) The complainant intervened to resolve the quarrel. All the accused assaulted him. Hence, Ramesh, the cousin of complainant intervened.

(c) Sohail ran towards his house and returned with sword in his hand. He assaulted Ramesh with sword. Gullu Sajida came with gupti. He gave blow of gupti on left lap of Ramesh. Sohail assaulted Smt. Daya Trivedi on her hand. Yusuf and Imran caught hold of Ramesh and Sohail and Gullu assaulted him with intention to kill him. Shahrukh assaulted complainant by fist blow and prevented him from intervening by wooden bamboo and also threatened that even he will be killed.

3. The applicant preferred applications for bail before Sessions Court which were rejected by order dated 9th January, 2015 and 15th June, 2015. The applicant thereafter preferred an application for bail before this Court bearing Bail Application No.1340 of 2015. The said application was allowed to be withdrawn vide order dated 20th August, 2015. The applicant was however not heard on merits. The applicant thereafter preferred another application before this Court

i.e. Bail Application No.1829 of 2015. The said application was dismissed as withdrawn vide order dated 24th January, 2017. It was observed by the Court that after arguing at length, the learned counsel for the applicant, upon instructions seeks liberty to withdraw the application. Liberty as prayed for is granted in the interest of justice.

4. This application came up before this Court for hearing on 4th May, 2017. This Court passed an order on 4th May, 2017 that learned Counsel for the applicant fairly pointed out that the earlier application preferred by the applicant was dismissed as withdrawn by the coordinate Bench by order dated 24th January, 2017. In view, therefore, Registry was directed to place the application before the same Bench. It appears from the record that a precipe was moved at the instance of applicant that the application may be listed before any other Court than the Court which passed order dated 24th January, 2017 wherein the application was dismissed as withdrawn which is referred to hereinabove. The Registry therefore placed the matter before the Hon'ble Chief Justice for appropriate directions and on the directions issued by the Hon'ble Chief Justice, the matter has been assigned to this Court being the Court of regular roster.

5. Learned advocate for the applicant submitted that the earlier applications which were withdrawn were not heard on merits. It is submitted that the applicant is in custody for a long period of time and the chargesheet is already filed. It is submitted that the applicant has been implicated on account of rivalry with builder who intends to usurp property of the accused. It is submitted that the complainant and others are acting in connivance with the said builder. The learned counsel further submitted that co-accused Imran who has been attributed the similar role has been granted bail by this Court vide order dated 26th September, 2016 passed in Bail Application No.1441 of 2016. It is submitted that the applicant is entitled for bail on the ground of parity. He submitted that right from inception there is attempt to implicate the applicant and the other accused and create an evidence against the accused. He placed reliance upon the compilation of documents. It is submitted that the said documents are received by the applicant through RTI. He relied upon the photographs which were recorded in the CCTV camera. It is submitted that these are part of supplementary chargesheet. It is submitted that the photographs which are annexed therein shows that prosecution case is completely false. It is submitted that the role assigned to the applicant and other accused is falsified by the

said photographs. It is submitted that the photographs also indicate that the deceased was taken for treatment by the accused and not by the witnesses. It is submitted that the witnesses travelled in different vehicle. It is submitted that the accused are visible in photographs which indicates that the incident as alleged by the witnesses is contrary to the said photographs which was taken from C.D. which was submitted by the investigating authority in the supplementary chargesheet. He placed reliance upon the statement of builder which is recorded by the investigating officer and which forms part of the chargesheet. It is submitted that the applicant / accused are implicated at the instance of the said builder which is evident from the tenor of the statement of the said builder. It is further submitted that the cross FIR was registered on 22th October, 2014 vide CR No.499 of 2014 alleging that the houses of accused were burnt by some persons who are acting at the instance of the builder and in connivance with the police machinery. It is submitted that the act of burning the house was at the instance of the people belonging to Bajarangdal and Shivsena who were supported by the builder. It was also submitted that the order passed in favour of the co-accused has not been set aside by any Court. The Role attributed to applicant is holding deceased Ramesh. The applicant has not used any weapon

and participated in assault.

6. Learned APP strongly opposed the application for bail. It is submitted that clear role has been assigned to the applicant by the witnesses. It is submitted that the co-accused has been granted bail by this Court vide order dated 26th September, 2016 on the ground that the role attributed to the said accused is that he alongwith co-accused held deceased Ramesh when accused Sohail assaulted deceased with sharp edged weapon. It was observed that role played by the said accused is lesser with the role attributed to the principle accused Sohail Salim Ansari who was granted bail by the Sessions Court. Learned APP further submitted that the order granting bail passed in favour of Sohail Khan was subsequently cancelled by this Court vide order dated 24th January, 2017. It is submitted that order passed by this Court cancelling bail of Sohail Ansari has been confirmed by the Supreme Court by dismissing the Special Leave Petition preferred by the said accused challenging order dated 24th January, 2017. It is submitted that the witness has categorically attributed the overt act to the applicant as a person who was holding deceased alongwith Imran. The deceased was assaulted by other accused at that time. He further pointed out that there are several

statements of eye witnesses which corroborates overt act attributed to the applicant. It is further submitted that blood stained clothes were recovered at the instance of the applicant. He submitted that the photographs which had emanated from the CCTV footage and relied upon by the applicant will be considered during the trial. The interpretation given by the applicant that the photographs are contrary to the evidence on record will have to be decided during the trial. Learned APP submitted that the order passed by this Court granting bail to Imran is subject to challenge before the Apex Court and the proceedings are pending. It is therefore submitted that prima facie case is made out against the applicant and he is not entitled for bail.

7. I have perused the documents on record. The statement of the witnesses categorically attributes the role to the applicant as a person who had caught hold of the deceased and facilitated the assault. The statements of several witnesses corroborate the prosecution case. The witnesses has attributed specific role to the applicant. The statement of Smt. Daya Trivedi states that on the call given by Sohail, the applicant and other accused came at the spot. All of them including applicant assaulted her and her two sons. Similar overt act is also

attributed by Jayesh Trivedi and Hitesh Trivedi. It is noted that the order granting bail which was passed in favour of co-accused Imran was on ground that the main assailant viz. Sohail Ansari has been granted bail by the Sessions Court and role attributed to him was most serious than the present applicant. It is pertinent to note that the order granting bail to Sohail was subsequently cancelled by this Court on merits and the petition preferred by the said accused against the said order before the Apex Court has been dismissed and the said applicant was directed to surrender within a stipulated time. The application has been made by the applicant on the basis of the documents collected by the applicant through RTI and the photographs is the matter which has to be analysed during the time of trial. The eye witnesses has specifically attributed the overt act to the applicant. Innocent person who tried to intervene and pacify the accused has been murdered. The manner in which the deceased and witnesses were assaulted does not warrant grant of bail to the applicant. This is the third application for bail preferred by the applicant before this Court. The ground that he is falsely implicated at the instance of the builder and that there is rivalry between two groups is a matter which is to be decided as defence during the trial. Prima facie there is evidence which shows involvement of the

applicant in the crime.

8. In the light of the aforesaid circumstances, no case for bail is made out by the applicant and therefore the bail application No.844 of 2017 has to be rejected. Hence, I pass following order;

:: ORDER ::

- (i) Bail Application No.844 of 2017 is rejected.
- (ii) The Commissioner of Police, Thane is directed to issue appropriate direction to the concerned authorities to produce accused in Sessions Case No.44 of 2015 before the Trial Court on date of hearing to facilitate completion of trial expeditiously.

[PRAKASH D. NAIK, J.]