

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

APPLICATION NO.897 OF 2017

Mirza @ Zakir Noor Shaikh .. Applicant
Versus
State of Maharashtra .. Respondent

Mr. Aniket Nikam with Aashish Satpute i/b. Chetan Mamre for applicant

Ms. A.A.Takalkar, APP for State

Mr. R.T.Darwade, API Vishramwadi police Station, Pune present.

CORAM : T.V.NALAWADE, J.

DATE : 7th August 2017.

P.C.

1] The application is filed for bail. Both sides are heard. Learned Counsel for the applicant makes a statement that this is the first application for bail filed in this Court. The papers of investigation were made available to this court for perusal.

2] The deceased Prashant Gumanekar was brother of first informant. There was suspicion to accused No.1 Haider that the deceased had illicit relations with the wife of Haider. On that count there were quarrels in the past.

3] The incident in question took place on 1st April 2016. On that date when the deceased left his house at 11.30 a.m. on his motor cycle, two - three persons forcibly took him away in a four wheeler. Crime was registered vide C.R.No.69/2016 at Vishrantwadi Police Station, Pune for offences punishable under sections 363, 364, 365, 302, 201, 120-B, 34 of Indian Penal Code.

4] F.I.R. was given on 2nd April 2016 by one Sikander - brother of the deceased and it was to the effect that on 1st April 2014 at about 11.30 a.m., he received a phone call from the wife of the deceased that at about 11.30 a.m. the deceased left the house without leaving behind any message. After that he made search for deceased. As there was aforesaid previous incident, Sikander gave missing report and expressed suspicion against the four persons including the present applicant. The present applicant is real brother of Haider. During the course of investigation statements of other witnesses were also recorded which include statements of Ankush and Moinuddin. Ankush knew deceased and accused persons. The statement of Ankush recorded on 2nd April 2016 and even the

supplementary statement show that he had last seen deceased in the company of the accused Haider and Mohammed Qureshi. He had however not seen that deceased was forcibly being taken away by the accused. He had witnessed the incident at 12.00 noon. Moinuddin - auto rickshaw driver gave a statement to the police on 4th April 2016 for the first time to the effect that on 1st April 2016, at about 12.00 noon near Saraswat bank he had seen Haider, Mohammed Shoeb Shaikh and present applicant. He had seen that they were quarreling with the deceased and then they took the deceased forcibly with them in the four wheeler of Haider.

5] The charge sheet is filed and material collected show that the dead body of the deceased was recovered on the basis of statement given under section 27 of the Evidence Act by Haider. The house where the dead body found belongs to co-accused. The motor cycle of the deceased also came to be recovered on the basis of the statement given by Haider.

6] During the trial there will be evidence of witness like driver of rickshaw against the present applicant to show that he had seen the

deceased lastly in the company of the present applicant. It appears that though one Akshay had also witnessed the incident at about 12.00 noon, he did not know the persons involved in the incident. Unfortunately, the investigating officer did not conduct T.I. parade to enable Akshay to identify the accused.

7] The present applicant is behind bars from 3rd April 2016. It is not clear as to how much time the trial court will take to conclude the trial. This court desires that the applicant shall not be kept behind bars till the disposal of the case. In the circumstances, following order is passed:-

- (i) The applicant is released on bail on P.R. bond of Rs.30,000/- with one or more solvent sureties;
- (ii) The applicant shall not tamper with the witnesses;
- (iii) The applicant shall not indulge himself in similar offences after his release on bail;
- (iv) The application is disposed of;

(T.V.NALAWADE, J.)