

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

CRIMINAL BAIL APPLICATION NO. 994 OF 2017

Razzak Abbas Khan .. Applicant

Vs.

The State of Maharashtra .. Respondent

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Mr.Murtuja Najmi i/b. Ms.Shabana Shaikh, Advocate for the Applicant.

Mr.Ajay Patil, APP for the Respondent - State.

Mr.Sanjay B. Salunkhe, PI, present.

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CORAM : PRAKASH D. NAIK, J.

DATED : JULY 1, 2017.

P.C. :

This is an application for bail in connection with C.R.No.68 of 2016 investigated by DCBCID Unit - VIII. Initially, the FIR was registered with Vakola Police Station vide C.R.No.473 of 2016 for the offences registered under Sections 302 and 120-B read with Section 34 of IPC read with Sections 3, 35 and 27 of the Indian Arms Act as well as Section 37(1)(A) and 135 of Bombay Police Act. The complaint was lodged by the son-in-law of the deceased.

2 The prosecution case is that the applicant along with his son Amjad Khan were involved in commission of murder of one Bhupen Veera. The complainant has stated that the deceased was assaulted on his head by some unknown person. He was taken to the hospital where he was declared dead. The deceased had sustained bullet injury in his head which has resulted into his death. The complainant has stated that the deceased was having a factory where utensils were made, which was adjacent to his house. The accused had encroached upon the said premises. There were disputes between deceased and applicant since several years and proceedings are pending in Court. The son of the deceased was assaulted by sons of applicant seven years ago. On account of the same, threats were issued to the deceased and his family.

3 It is the prosecution case that there was dispute between the applicant and his sons on the one side and the deceased on the other. It is alleged that the deceased Bhupen Veera had submitted complaints to the Corporation against the unauthorized construction carried out by the applicant and his sons. The notices were issued to the applicant and the other tenants. It is alleged that on the date of incident also a notice was

pasted at the premises of the applicant by the Corporation stating that the premises will be demolished. On account of the said animosity, the deceased was murdered. The prosecution is relying upon the statement of witnesses more particularly the statement of one Geeta who was working as a maid servant in the house of the applicant. The co-accused who is the son of the accused was also arrested and he is in custody. The role attributed to him is that he is the person who allegedly had shot at the deceased. There is recovery of revolver from the said accused. The applicant was arrested on 17th October, 2016.

4 The applicant preferred an application for bail before the Court of Sessions which was rejected. Hence, he has approached this Court and preferred the present application. The learned advocate for the applicant submitted that except motive there is no evidence against the applicant. He submitted that the prosecution is relying upon the complaints made by the deceased Veera. He submitted that it is not a conclusive proof to establish the involvement of the applicant. He submitted that the notices were issued to several other tenants even they had a grudge against the deceased. He submitted that there is no evidence to show that the applicant was the assailant or had joined the co-

accused while assaulting the deceased. There is no evidence to show that at the time of incident the applicant-accused was seen near the place of incident. He submitted the the statement of maid servant Smt.Geeta Rayapakwar, which is relied upon by the prosecution cannot be considered as an evidence to involve the applicant. The statement, at the most to show that the co-accused who is the son of applicant had visited the residence of the applicant. There was some discussion and the applicant was disturbed. The co-accused allegedly had left the house of the applicant. Amjad/co-accused was also seemed to be angry with something. The witness spoke to applicant as to why he did not finish his meal and at that time he said that he is not keeping well and is tensed because of litigation in Court. The statement of deriver of applicant refers to notice issued by corporation and discussion held between applicant and his son. The alleged incident has occurred on the same day in evening at 9.00 p.m. It is further submitted that the statement of one of the witnesses recorded by the investigating machinery show that the applicant was with him on the date of incident and they had returned home late in the evening. It is submitted that the said witness has not stated that the applicant was undergoing any tense moment. The learned advocate further submitted that merely on the basis of

the notice issued to the applicant or the complaint made by the deceased, it cannot be inferred that the applicant was involved in the crime. The witness Geeta has not stated that there was any discussion with regard to the complaints made by the deceased. He further submitted that merely on the basis of motive the applicant cannot be kept in custody. The applicant is 78 years old person and not keeping good health. He was arrested in October 2016 and on completing investigation, the charge-sheet is filed and further detention is not required.

5 Learned APP opposed the application. He relied upon the statement of the maid servant Smt.Geeta recorded on 21st October, 2016 as well as the complainant and other witnesses. He submitted that on the date of the incident, the notice issued by the corporation was pasted on the premises of the applicant. The notice was in relation to the demolition of the said structure. He submitted that there was a cause of outburst which had resulted in the murder of the deceased. He submitted that on the date of incident, the co-accused had visited the residence of the applicant in the afternoon and from the statement of Smt.Geeta, it is apparent that he was disturbed. The witness has stated that there was discussion between applicant and his son (co-accused). There

was a motive for the applicant to commit the crime and he was one of the conspirator in the offence. He, therefore, submitted that the application may be rejected.

6 Having perused the documents on record and after hearing the submissions of both the sides, it is apparent that the charge levelled against the applicant is that he is the conspirator to commit the murder of the deceased and that there is motive to commit the said crime as the deceased have lodged complaints against the applicant and his sons. It is noted that the complaints were lodged in the year 2010 onwards. Except the motive, there is no cogent evidence to show the complicity of the applicant in the said crime. The charge of conspiracy has to be established by evidence. The suspicion, however, strong may not be sufficient to prove the charge against the accused. The applicant was not seen near the place of incident. The statement of the maid servant Smt.Geeta merely states that the co-accused had visited house of the applicant – accused and the applicant was visibly upset. The co-accused is the son of applicant and his visit cannot be viewed suspiciously. The witness has not stated that there was any conversation between them against the deceased. That itself is not sufficient to attribute the applicant with the charge of

murder. There is no other evidence except the motive against the applicant. The applicant is aged about 78 years, he is in custody from October, 2016. The investigation is completed and the charge-sheet is filed. In the circumstances, I am inclined to grant bail to the applicant.

7 Hence, I pass the following order:

:: ORDER ::

- (i) Bail Application No.994 of 2017 is allowed;
- (ii) The applicant is directed to released on bail in connection with C.R.No.68 of 2016 investigated by DCBCID Unit - VIII (C.R.No.173 of 2016 registered with Vakila Police Station), on furnishing P.R. Bond in the sum of Rs.50,000/- (Rupees Fifty Thousand) with one or more sureties in the like amount;
- (iii) The applicant is directed to report DCBCID Unit - VIII, once in a fortnight on Saturday between 11.00 a.m. to 1.00 p.m., till further orders;

- (iv) The applicant shall not tamper with the prosecution evidence;
- (v) Considering the age of the applicant and that he is ailing, the applicant is permitted to furnish cash security for a period of two weeks in lieu of the surety as directed in Clause (ii) of the order;
- (vi) Bail Application is disposed of accordingly.

(PRAKASH D. NAIK, J.)