

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

CRIMINAL BAIL APPLICATION NO.1034 OF 2017

Sohail Salim Ansari

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Prashant Pandey for the applicant.

Mr. R. M. Pethe, 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 had preferred an application for bail before the Sessions Court. The Applicant was granted bail by the Sessions Court vide order dated 2nd August, 2016 in Bail Application vide Exh.10. While granting bail to the applicant the Sessions Court in its order dated 2nd August, 2016 has observed that fatal blow was not given by the applicant which has resulted into death of deceased. Trial has

not commenced and it is not likely to finish up shortly. The said order was challenged by the original complainant before this Court. The application was heard by this Court and by order dated 24th January, 2017 passed in Criminal Application No.645 of 2016, the bail granted to the applicant was cancelled by this Court. The applicant was directed to surrender before the Sessions Court on or before 14th February, 2017.

4. The said order was challenged by the applicant before the Apex Court vide Petition for Special Leave to Appeal (Cri.) No.1166/2017. By order dated 13th February, 2017, the order of High Court cancelling the bail was kept in abeyance. On 19th April, 2017, the Apex Court was pleased to dismiss the said Special Leave petition and granted one week time to the applicant to surrender.

5. The applicant preferred this application for bail. The applicant thereafter surrendered before this Court which was recorded vide order dated 26th April, 2017. The applicant was taken into custody and was handed over to the investigating officer who was present in Court.

6. Learned advocate for the applicant submits that the applicant has been falsely implicated in this case. It is submitted that on account of enmity between applicants and the builder who intends to usurp the property belonging to the accused persons, the present crime has been registered implicating the applicant and others. It is submitted that the entire case of the prosecution is false and frivolous. It is submitted that the deceased had sustained injuries due to fall and the applicant is not author of the injuries which was caused to the deceased. It is submitted that the vital documents were suppressed from the Court at the time when the bail was cancelled by this Court. It is submitted that the photographs which emanates from the CCTV footage which forms part of the supplementary chargesheet falsify the prosecution case. The photograph does not indicate that the applicant was present at the scene of offence with the sword to assault the deceased as alleged by the prosecution. He submitted that photograph indicates that the applicant had left scene of offence and thereafter he was not seen at the place of incident. He submitted that the witnesses has falsely stated against the applicant. He submitted that final cause of death was not brought to the notice of the Court when the application for intervention of bail was being heard. In the said final cause of death is mentioned;

“A Death due to a hemorrhagic shock C H10 Sharp performing wound (injury) in Left thigh by C Sharp weapon c evidence of Alcohol (Ethyl Alcohol) found in Blood.”

Learned counsel submitted that in the said final cause of death there is reference of the evidence of alcohol (Ethyl alcohol) being found in the blood. He submitted that the presence of alcohol (Ethyl alcohol) is dangerous to the life of the person. It is submitted that the apparently the deceased has died on account of alcohol (Ethyl alcohol) poison. He relied upon the forensic extract from the book of Chemical reaction. The description about the alcohol (Ethyl alcohol) has been mentioned. It is stated that the Ethanol (Ethanol, wine alcohol) is a member of various drinks, has a high toxicity and can result in the abuse of severe acute poisoning. Various other aspects of the consequences of the alcohol (Ethyl alcohol) has been stated in the said extract. It is therefore submitted that the cause of death as stated herein clearly changes the complexion of case. The defence of the applicant that the deceased had died on account of fall is substantiated by the said cause of death. It is further submitted that this document was suppressed at the earlier point of time by the prosecuting agency. Thus the document which is referred to cause of death and CCTV photographs which are relied upon by the applicant

can be considered to be change in the circumstances for entertaining the present application. It is further submitted that this Court had cancelled the bail granted to the applicant on the ground that there was non application of mind on the part of the Sessions Court while granting bail and therefore this Court can consider the present application on merits. It is submitted that order granting bail to the co-accused viz. Imran is still in force and same has not been set aside by the higher Court. It is submitted that the entire chargesheet clearly establishes that there is an attempt to falsely implicate the applicant and others in the said crime.

7. Learned APP opposed the application for bail. It is submitted by the learned APP that there is enormous evidence against the applicant in the present time. The complainant and other witnesses who were present at place of incident and who were assaulted has given overt act of assault to the applicant. The deceased was assaulted by sword by applicant. He has been attributed the role of assaulting the deceased and other by using sword. The deceased has died on account of the injuries. He further submitted that the submissions advanced by the learned counsel for the applicant are devoid of any merits, at the most the same can be considered at the

time of trial. It is submitted that the final cause of death which is pointed by the counsel for the applicant in any case mentioned that the death is due to hemorrhagic shock and history of sharp perforating injury in left thigh by a sharp weapon. It is submitted that although there is reference of alcohol (Ethyl alcohol) in the cause of death, the fact remains that the deceased had sustained injury which is corroborated by the evidence of the eye witnesses. It is submitted that the contention raised by the applicant with regard to the photographs which are submitted by tendering compilation of documents cannot be considered at this stage. It is submitted that it is difficult to accept the interpretation made by the counsel for the applicant in respect to the said photographs. It is further submitted that the bail granted to the applicant was cancelled by this Court on merits after observing that there is evidence against the applicant. It is submitted that the said order was confirmed by the Apex Court. In view of that this Court may not entertain this application for bail and at the most the applicant can approach the Supreme Court.

8. I have perused the documents on record. The evidence of the eye witnesses attributes specific role to the applicant as a person who was involved in the commission of crime. It is pertinent to note that

the applicant was granted bail by the Sessions Court vide order dated 2nd August, 2016. Prior to that the application for bail preferred by the co-accused was rejected by this Court vide order dated 23rd March, 2016. It is also pertinent to note that while cancelling the bail granted to the applicant vide order dated 24th January, 2017, it has been observed that there is ample material to show that the applicant had converted the verbal altercation into a physical altercation with a deliberate intention brought the weapon from the house and mounted assault upon the person that too on the vital parts of his body with an intention to cause homicidal death. Hence, bail granted to applicant was cancelled. A Special Leave Petition challenging the said order has been dismissed by the Apex Court. In the circumstances, it is difficult to accept that there is no evidence to connect the applicant in the present case. The case was already dealt with on merits by this Court while cancelling the bail. Apart from that on perusal of chargesheet I find that there is substantive evidence against the applicant. The eye witnesses have attributed role of assault by sword to the applicant. Grounds raised by the applicant with regard to interpretation of the photograph and final cause of death is the matter of interpretation which has to be decided in evidence during the course of trial. When the application for bail

preferred by applicant was heard by Sessions Court the bail application of Gullu Sajida was rejected by this Court. He was attributed role of assaulting deceased by gupti on his thigh. The said order was not pointed out to Sessions Court.

9. In the circumstances, I am not inclined to grant bail to the applicant and the application deserves to be rejected.

10. The applicant is in custody from 22nd October, 2014. This Court vide order dated 23rd March 2016 had expedited the trial. It was observed that trial Court may endeavour to complete the trial within one year. However, it is also required to be noted that the accused had preferred applications for bail before Sessions Court, this Court and even initiated proceedings before Apex Court. Even after the appeal before Apex Court was dismissed, the present application was preferred. Since the accused are in custody for long time, the trial Court to complete the trial within nine months. The accused be produced before trial Court on date of hearing to facilitate expeditious hearing of trial. Therefore, I pass following order;

:: ORDER ::

- (i) Bail Application No.1034 of 2017 is rejected.

- (ii) It is clarified that the observations made in this order are only for considering the application for bail and the trial Court should not get influenced by the said observations at the time of trial.
- (iv) Trial Court to complete the trial expeditiously within a period of nine months.

[PRAKASH D. NAIK, J.]