

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1080 OF 2017

Moinuddin Mohammed Syed Kirkire,
Age 54 years, presently lodged at
Artur Road Jail, Mumbai.

Applicant

versus

The State of Maharashtra

Respondent

Mr.Niranjan Mundargi i/by Mr.O.A.Jadhav for Applicant.
Ms.A.A.Takalkar, APP, for State.

CORAM : PRAKASH D. NAIK, JJ.

DATE : 21st June 2017

PC :

1. This is an application for bail. The offence is registered with Mahim Police Station, Mumbai vide CR No.28 of 2016 for offences punishable under Sections 302, 143, 144, 147, 148 and 149 of Indian Penal Code.

2. The incident in question had occurred on 29th January 2016. It is alleged that on the date of incident Iqbal Sattar Shekh lodged a report at Mahim Police Station alleging that on that day, they had been to Memon Hall as there was a marriage of their relative. Just near the venue at Afzal Tea House, accused no.5 Muzzamil was allegedly staring at Asif @ Bada Papa. He had questioned him. There was a verbal altercation between them. At about 5.25 p.m., Asif @ Bada Papa 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 went towards the crowd and he saw that Asif

@ Bada Papa had fallen on ground in a pool of blood. He was taken to the hospital. According to the prosecution, Bilkis had assaulted Asif on his back with sticks. Accused no.1 Moinuddin i.e. the Applicant herein snatched the knife from his son (Accused no.5) and assaulted Asif on his neck. On account of the said injuries, he died. The body of the deceased was sent to post mortem and one injury was noticed on the neck in the nature of CLW admeasuring 6 cm x 2 cm. The Applicant was arrested on 30th January 2016. Since then he is in custody.

3. The investigation is complete and charge sheet has been filed. All other co-accused are granted bail.

4. Learned advocate for the Applicant submitted that a cross case has been registered against the opponents with the same police station vide CR No.29 of 2016 for offences punishable under Sections 326, 324, 504 and 34 of Indian Penal Code. In the said FIR, Asif @ Bada Papa, Iqbal Faizal and unknown persons were impleaded as accused. The son of Applicant Muzzamil, who is accused no.5 in the present case, has sustained injuries. The said fact is corroborated by medical certificate which has been annexed to this application. Police investigated both the cases. Asif had died on account of injury sustained by him. The learned counsel for Applicant submitted that a single blow was allegedly given to the deceased. He further submitted that even if the case of complainant is accepted, there is evidence to show that Applicant's son was assaulted by opponents and applicant could have exercised the right of private defence. He submitted that most of the witnesses had given contradictory

versions as they have not stated that the Applicant had snatched the knife from the hand of Muzzamil and gave blow on the deceased. He further pointed out the statements of witnesses which were recorded in the cross case. Witness Salim Shaikh in his statement dated 20th June 2016 has stated that on 29th January 2016, at about 6.20 p.m. he had left his office and proceeding towards Khansabwadi for tea. At that time Bade Papa came with knife, he was shouting and ran towards house of Gulam Kirkire. At that time Moinuddin, Muzzamil and Gulam Kirkare were standing there. Bade Papa assaulted Muzzamil by knife and his father intervened and there was scuffle between both of them. Similar statement was also made by Yusuf Mohammed Chowdhari and Abdul Samad Khan. The complainant had stated that the Applicant had snatched the knife from the hands of Muzzamil and assaulted Asif. It is submitted that the witnesses Wasim Shaikh, Mohammed Dastagir Shaikh, Juber Umar, Smt.Sugra Memon, Reshma Memon and others had stated that Applicant gave blow of knife which was in his hand which is contrary to version of complainant. Admittedly the incident had occurred in front of the house of Applicant. Learned advocate for the Applicant submitted that he has been falsely implicated in the case. All other accused are released on bail. His further custody is not necessary.

5. Learned APP opposed the application for bail. She submitted that the version of complainant in the cross case is after thought. The cross case was registered subsequently. She also doubted the versions of witnesses in the cross case. It is submitted that the deceased had died on account of blot given by the Applicant on his neck.

6. I have perused the first information report and other documents which form part of the charge sheet. I have also perused the cross case and the statements of witnesses. From the documents it is apparent that the son of the Applicant had also sustained injuries, which is subject matter of cross FIR. In the cross FIR, it was alleged that the deceased has assaulted the son of Applicant. From the statements of the witnesses which were recorded in the cross case, it appears that the deceased was carrying a knife and going towards the house of the Applicant and he assaulted Muzzamil. In the light of contradictory versions and the fact that the Applicant had allegedly given a single blow, the Applicant can be released on bail. There are no criminal antecedents against the Applicant. Hence, I pass following order :

ORDER

- (i) The Applicant is directed to be released on bail on furnishing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount in connection with CR No.28 of 2016 registered with Mahim Police Station, Mumbai;
- (ii) The Applicant is directed to report Mahim Police Station, Mumbai once in a week on every Saturday between 11.00 a.m. and 1.00 p.m. till further orders;
- (iii) The Applicant is permitted to furnish cash security for a period of three weeks in lieu of surety;
- (iv) The application stands disposed of.

(PRAKASH D. NAIK, J.)