

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1155 OF 2017

Mr.Ajay Ashok Chavan ... **Applicant**

V/s.

The State of Maharashtra ... **Respondent**

.....

Mr.Amit Munde, Advocate for the Applicant.

Mr.R.M.Pethe, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 30th OCTOBER 2017.

P.C. :

1 The applicant/accused in Crime No.381 of 2015 registered with Police Station Nirmalnagar for offences punishable under Sections 302, 504 read with Section 34 of the Indian Penal Code as well as Section 37(a) read with Section 135 of the Maharashtra Police Act at the instance of Mehrajuddin Shaikh - daughter of deceased Nasir Shaikh, by this application, is seeking his release on bail after filing of the charge-sheet.

2 Heard the learned Advocate appearing for the applicant/accused as well as the learned Additional Public Prosecutor appearing for the respondent/State.

3 The learned Additional Public Prosecutor opposed the application by vehemently arguing that statement of Ashraf as well as statements of other witnesses are corroborating the version of Mehrajuddin Shaikh and presence of the applicant at the scene of occurrence and his role in the crime is established from statements of witnesses examined by the prosecution during the course of investigation. Therefore, in submission of the learned APP, considering the nature of offence, the applicant is not entitled for bail.

4 I have carefully considered the submissions so advanced and also perused the charge-sheet. It is seen that in the incident in question Nasir Shaikh died homicidal death. The question which is required to be addressed at this *prima facie* stage is whether considering the role attributed to the present applicant, his pre-trial detention is warranted or not. According to the prosecution case, in the night intervening 21/12/2015 and 22/12/2015, accused persons including the present applicant in furtherance of their common intention committed murder of Nasir Shaikh by causing death of said Nasir Shaikh by assaulting him by means of sharp edged weapon.

5 First informant Mehrajuddin – daughter of the deceased had reported to police that she reached Noor Azad Chawl at about 00.10 hours of 22/12/2015 after visiting her ailing mother, who at the relevant time was admitted at Joshi Nursing

Home. She stated that at that time she saw that co-accused Dinesh, his brother Kalu and their two friends namely Sagar and Ajay @ Kana were abusing her father. In her presence, co-accused Kalu caught hold of her father from behind and his brother Dinesh had assaulted her father Nasir by means of sharp edged weapon. Then, all accused persons ran away from the spot.

6 As against this, Nasrin Nasir Shaikh – another daughter of deceased Nasir Shaikh has stated to police during investigation that she returned after visiting her ailing mother to the place of her residence in the midnight. In the locality, she met her father Nasir. At that time, co-accused Dinesh and her father Nasir indulged in wordy duel. At the same time, another accused Kalu came and caught hold of hands of her father Nasir and then co-accused Dinya/Dinesh started giving blows of sharp edged weapon to her father Nasir. This witness, who claims to have seen the incident closely while she was in company of her father Nasir has not stated anything about present applicant Ajay @ Kana. She has not deposed that Ajay @ Kana was indulged in wordy duel or given abuses to Nasir at the time of the incident. All that which is told by this witness is to the effect that after the incident accused persons flee from the spot and at that time, present applicant Ajay @ Kana, who was standing near the temple, had also fled from the spot of the incident.

7 Third witness Kum.Farzana Mohammed Beg also

claims to have seen the incident. She stated that she had talk with deceased Nasir soon before the incident. She further stated that then co-accused Dinesh came and upon seeing co-accused Dinesh, Nasir Shaikh (since deceased) started hurling abuses. Then, co-accused Dinesh started giving abuses to Nasir. As per version of this witness, co-accused Kalu came and caught hold of Nasir. Thereafter, co-accused Dinesh had assaulted Nasir by means of knife. This witness stated that then Kalu and Dinesh flee from spot and at that time, the present applicant and one another, who were standing at the temple, also flee from the spot.

8 Statement of Farzana shows that deceased Nasir was on inimical terms with the accused persons as in September 2015, he had objected not wearing *odhani* by wife of co-accused Dinesh and matter went up to the Police Station.

9 In the backdrop of this fact, even if it is assumed that the applicant was present on the scene of occurrence indulging in wordy duel with deceased Nasir Shaikh, then also, *prima facie*, it cannot be said that the applicant was cognizant of the common intention of his companion i.e. co-accused Dinesh and Kalu. *Prima facie*, it is seen that overt act of mobilizing the deceased and giving blows of sharp edged weapon on him by co-accused Dinesh and Kalu was fresh and independent act springing wholly from the mind of the doer.

10 The learned APP also opposed the application by contending that two offences are registered against the present applicant. Care of this submission can be taken by imposing stringent conditions on the applicant.

11 Considering the nature of evidence against the applicant reflected from the charge-sheet, his pre-trial detention is not warranted. Therefore, the Order :

- (i) The application is allowed.
- (ii) The applicant/accused in Crime No. 381 of 2015 for offences punishable under Sections 302, 504 read with Section 34 of the Indian Penal Code as well as Section 37(a) read with Section 135 of the Maharashtra Police Act registered with Police Station Nirmalnagar, Mumbai be released on bail on executing P.R. bond of Rs.25,000/- and on furnishing one or two solvent surety in the like amount.
- (iii) As a condition of this Order, the applicant/accused should not tamper the evidence of prosecution and should also not extend threat, promise and inducement to any person acquainted with the facts of the case, so as to dissuade him from disclosing such facts to the Court or to the Police Officer.

(iv) The application is disposed of accordingly.

(A.M.BADAR J.)