

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1226 OF 2017**

Shahbaj Majid Pathan @ Khan	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr. Ganesh K. Gole for the Applicant

Mr. Y. M. Nakhwa, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.
FRIDAY, 28th JULY, 2017

P.C. :

1. Heard learned Counsel for the parties.
2. By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 193 of 2016 registered with the Bhadrakali Police Station, Nashik, for the alleged offences punishable under Sections 302, 341 r/w 34 of the Indian Penal Code and under Section 135 of the Maharashtra Police Act.
3. Learned Counsel for the applicant submitted that the allegations as against the applicant are false. He submitted that the statement of the complainant-Saif Mohammad Hanif Shaikh, although

mentions the presence of Waseem Shaikh, Waseem Shaikh's statement shows that the complainant was not present at the spot, at the time of the assault. He submitted that even otherwise, the statement of Waseem Shaikh shows that the applicant was not carrying or holding any weapon and that he did not touch the deceased or any other person. He submitted that the applicant cannot be attributed with the common object of the co-accused.

4. Learned A.P.P opposed the application. He submitted that trial has commenced and that one witness has been examined so far.

5. Perused the papers, in particular, the statement of the complainant-Saif Mohammad Hanif Shaikh and the eye-witness-Waseem Shaikh. According to the complainant-Saif Mohammad, he has seen the assault on deceased-Taufiq Mohammad Shaikh. He has stated that Rafiq Shaikh, Raj Shaikh, Mohsin Shaikh and the applicant followed the deceased and that Raj Shaikh and Mohsin Shaikh held Taufiq Shaikh (deceased), after which, Uzer Shaikh pulled out a chopper and assaulted his brother, questioning him, why a complaint was lodged against them. He has stated that Uzer Shaikh assaulted his brother-Taufiq with a chopper on

his chest, arms, etc. He has stated that when he tried to intervene, the present applicant stopped him from going ahead.

6. Although, the statement of Waseem Shaikh does not show the presence of the complainant, however, he too has made a similar allegation as against the applicant. He has stated that tried he went to save the deceased, the applicant stopped him and others, from proceeding ahead. Apart from the said evidence, there are 164 statements of three witnesses. The deceased has sustained as many as 24 injuries and the cause of death is stated to be haemorrhagic shock due to multiple stab injuries to chest.

7. Considering the *prima facie* material on record, this is not a fit case to enlarge the applicant on bail. Even otherwise, the trial has commenced. Considering the aforesaid, the application is rejected.

8. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

REVATI MOHITE DERE, J.