

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1239 OF 2017

Sunil Manohar Shirke	..	Applicant
Versus		
The State of Maharashtra	..	Respondent

Mr. Vaibhav Bagade for applicant
Mr. A.R.Kapadnis, APP for State.
Mr. Pramod Kate, Police Sub-Inspector, Amboli Police Station

CORAM : P.D.NAIK, J.
DATE : 28th July 2017.

P.C.

1] This is an application for bail inconnection with C.R.No.29 of 2017 registered with Amboli Police Station, Mumbai for offences under sections 302 read with 34 Indian Penal Code. The applicant was arrested on 7th February 2017. Investigation is complete and charge sheet is filed on 29th April 2017.

2] The case of the prosecution is that the F.I.R. was lodged by one Mrs. Sushma Mane, wife of the deceased. In the complaint dated 31st January 2017 it is stated that the accused are residing in the building where the complainant is also residing. The accused Sunil Shirke (applicant) and his brother Kunal Shirke used to park their motor vehicle in the building premises in front of the vehicle of

the husband of the informant. There used to be quarrels on account of parking of vehicles.

2] On 31st January 2017, the husband of the informant went to the parking place to remove his vehicle. However, quarrel took place between the accused and the deceased. The complainant, then went to the place of quarrel and noticed that the accused were abusing her husband. The accused Sunil Shirke called his brother by giving a phone call. Daughter of the complainant also reached at the place of incident after hearing commotions. The accused started assaulting the husband of the complainant by fists and kick blows. At that time Kunal picked up the wooden stick which was lying near the place of the incident and assaulted the deceased. The informant was also assaulted. Thereafter, Sunil called his brother Kishor Shirke. Thereafter, Kishor Shirke and some women came at the scene and started assaulting the deceased. Kishor gave knife blow on the chest and other parts of the body of the deceased. Somebody informed the police and thereafter, the husband of complainant was taken to the hospital where he was declared dead. Firstly an offence was registered under section 307

of IPC and thereafter converted to section 302 IPC.

3] The investigation was conducted and statements of various witnesses were recorded. During the course of investigation, statements of Haroon Abdul Latif, Phiroz Shaikh, Nikhil Adhav, Deepak Kamble, Vinod Gupta and one Mr. Sartape were recorded. Supplementary statement of complainant was also recorded. In the supplementary statement recorded on 27th April 2017, complainant has stated that the applicant accused took the knife from the hands of Kishor Shirke and assaulted her husband by giving a blow of knife on his chest. It is also stated that Kunal and Sunil Shirke had also given blows by knife on the person of the deceased. The complainant also stated that several other persons were also involved in assaulting the deceased. There were several improvements in the said statement.

4] At the instance of the accused cross F.I.R. was registered with Amboli Police Station vide C.R.No.31 of 2017 on 31st January 2017 for the offences under section 326, 324, 323 and 506 read with 34 Indian Penal Code. In the said cross F.I.R. the deceased in the

present case and his wife were impleaded as accused. The complainant in cross F.I.R. namely Kunal Shirke who is impleaded as accused in the present case has also sustained injuries.

5] Learned Advocate for the applicant submitted that in the F.I.R. the only role that has been attributed to the applicant is that he had given fist and kick blows. He further pointed out that the statements of witnesses recorded in the present case wherein the said witnesses have stated that the deceased Subhash Mane was carrying knife and was threatening Kunal and Sunil Shirke (applicant). It is also stated that Mrs. Sushma i.e. the complainant in the present case had assaulted Kunal by wooden stick. He also relied upon a statement of one Rafique who has stated that Subhash (deceased) went to his house and came out armed with knives in both hands. Similar statements are made by another five witnesses. He further pointed out from the statement of complainant recorded on 27th April 2017 wherein the role of assault by knife is also attributed to the present applicant. He pointed out the injury certificate of persons who sustained injuries at the instance of complainant and deceased. He further submits that the applicant

has been falsely implicated.

6] Learned APP opposed the application. He submitted that the deceased had sustained several injuries and it cannot be a handwork of one person. It is, therefore, submitted that the statement of complainant which is recorded subsequently appears to be genuine. It is further submitted that the daughter of complainant is also an eyewitness. It is submitted on the issue of parking of vehicle the accused had assaulted deceased which has resulted into his death. It is, therefore, submitted that the applicant should not be granted bail.

7] I have perused the documents on record. Apparently in the F.I.R., the role that has been assigned to the applicant is that he had assaulted the deceased by fist and kick blows. It is pertinent to note that several witnesses whose statements are recorded in the present case have given contradictory versions which is against the case of prosecution as stated hereinabove.

8] The statement of complainant was subsequently recorded

after about three months where she has given different version and implicated several other persons. She has also attributed the role of assault by knife to the applicant. It is also noted that there is cross case registered at the instance of the co-accused Kunal against the complainant and deceased. It is apparent that the co-accused Kunal had also sustained injuries which is evident from the Medical certificates which have been annexed to this application. Considering the aforesaid circumstances, the application deserves to be allowed on certain conditions. Hence, the following order:-

ORDER

- (i) Bail Application No.1239 of 2017 is allowed;
- (ii) Applicant is directed to be released on bail in connection with C.R.No.29 of 2017 registered with Amboli Police Station on furnishing P.R.bond in the sum of Rs.30,000/- with one or more sureties in the like amount;
- (iii) The applicant is directed to report to the concerned police station once in a month on first Saturday between 11.00 a.m. and 1.00 p.m.;

- (iv) Applicant should not tamper with the evidence and shall not approach witnesses;
- (v) Applicant shall not reside in the premises where the incident has taken place and where the complainant resides;
- (vi) Applicant shall attend trial court proceedings on the date of hearing;
- (vii) Application is disposed of.

(P.D.NAIK, J.)