

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

BAIL APPLICATION NO. 1265 OF 2017

Parwez Alam Khan Anwarali
Khan @ Ramzan

.. Applicant

Vs.

The State of Maharashtra

.. Respondent

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Mr.A.P. Mundargi, Senior Advocate i/b. Mr.Abhishek Yende,
Advocate for the Applicant.

Mr.Deepak Thakare, APP for the Respondent – State.

Mrs.Bhagyashri Gawas, Advocate for original complainant.

Mr.Rajiv Chavan, P.I. Andheri Police Station, present.

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CORAM : PRAKASH D. NAIK, J.

DATED : JULY 17, 2017.

P.C. :

This is an application for bail in connection with C.R. No.48 of 2017, registered with MIDC Andheri (East), Mumbai Police Station for the offence punishable under Sections 302, 307, 326, 342, 147, 148, 149, 506(2) and 120 B of IPC. The applicant was arrested on 26th February, 2017. The investigation is completed and the charge-sheet has been filed.

2 The prosecution case is that on 3rd February, 2017 at about 3.20 p.m. MIDC Police Station received an information that

three injured are lying at Bhangarwadi, Subhashnagar MIDC at Andheri. One person namely Vasiulla Moshin Shaikh was injured. Thereafter, the FIR was lodged at the instance of Abdul Mohasin Shaikh. The complainant narrated the alleged incident of assault to the investigating machinery. It is alleged that on 3rd February, 2017, one person namely Chinka called the informant and deceased to Bhangarwadi area. It is alleged that both of them along with one person namely Shamsuddin went there. One Chinka told to him not to give information to the police. It is further alleged that thereafter the accused took them into a gala for lunch. There were two unknown person aged about 25 to 30 years present at the place of incident. It is alleged that the accused had gathered there to kill the complainant, deceased and Shamsuddin. The accused assaulted the complainant and others in which one of the injured succumbed to the injury and were declared dead. It is alleged that the accused threatened the locals not to indulge in the matter and else they will face dire consequences. The injured was taken to the gala in the injured condition and the locals were told not to assist with the injured person. On the basis of the information given to the police, FIR came to be registered on 3rd February, 2017.

3 Learned senior advocate Mr.Mundargi appearing for the applicant submitted that the applicant has been falsely implicated in this case. It is submitted that the complainant has improved his version in the supplementary statement and implicated the applicant as one of the person who participated in the crime. It is submitted that the complainant was aware about the name of the applicant as the son of Pattusheth alias Anvwar Ali Mohd. Jalil Khan. It is submitted that even the name of the said accused who is father of the applicant was introduced subsequently in the supplementary statement. It is further submitted that the father of the applicant and the applicant were known to the complainant since they are from same village and were implicated by improving the statement. It is submitted that Puttusheth has preferred an application for anticipatory bail before this Court which was allowed by order dated 19th April, 2017. In the said order, this Court has observed that the name of the said accused was not mentioned in the FIR by the complainant and in the supplementary statement the first informant had stated that the said accused is known as Pattusheh is owner of the shop/gala where the injured person was assaulted. At the time of commission of offence, he was standing 30 feet away in the corner. It is also noted that similar statements were

also made by the witness Samshuddin Sajjad Husain Shah, who improvised his version in the supplementary statement. It was, therefore, observed that the injured witnesses namely complainant, Abdul Mohsin Shaikh and Samsuddin Husain have belatedly named the applicant Pattusheth alias Anvwar Ali Mohd. Jalil Khan, as one of the participant in the crime in the subsequent statement. It was also recorded that the witnesses were knowing Pattusheth as they are from the same native place as Siddharth Nagar, State of Uttar Pradesh. The complainant named the applicant in the supplementary statement. Similarly, the other witnesses have also implicated the applicant in the supplementary statement. Learned advocate for the applicant also pointed out the statement of one Yogesh Gopal Ameta. As far as his statement, the applicant came at the scene of the offence allegedly after the incident of assault. He also pointed out the statement of Samshuddin Shah recorded on 4th July, 2017. In the supplementary statement it is stated that the complainant had informed him that one of the assailant is Ramjan i.e. the applicant. In view of the aforesaid circumstances, it is crystal clear that the applicant has been falsely implicated in this crime and he should be released on bail. It is further submitted that there are no criminal antecedents against the applicant. The

investigation is completed and the charge-sheet has been filed. The applicant is in custody from 26th February, 2017. Learned APP strongly opposed the application for bail. He submitted that the contradictions or omissions, if any, can be agitated during the trial. This is not the stage to consider the said infirmities. It is submitted that the witnesses have identified the applicant in the identification parade. He submitted that although in the supplementary statement, there is improvement, the said fact can be appreciated while recording the evidence in the trial. On taking instructions from the investigating officer, who is present in the Court, it is confirmed that there are no criminal antecedents against the applicant. It is further submitted that father of the applicant who has been granted anticipatory bail was not assigned the role of assault in the crime but, he was the person who allegedly was standing near the place of incident. He, therefore, submitted that the application may be rejected.

4 Learned advocate for the intervener submits that there are complaints against the applicant. She supported the submission advanced by the learned APP. It is submitted that bail may not be granted to the applicant.

5 I have perused the charge-sheet also perused the order passed by this Court while granting anticipatory bail to the father of the applicant. It is apparent that the complainant has not named the applicant in the FIR. The statements of other witnesses are similar. It is pertinent to note that while granting anticipatory bail to the father of the applicant, it has been observed by this Court that the accused was known to the said complainant and inspite of that his name was not reflected in the earlier statement. Similarly, the said observations are also applicable to the present applicant. The injured person stated that the complainant had informed the name of the present applicant. There are no antecedents against the applicant. Now the charge-sheet has been filed after completing the investigation. In the circumstances, case for bail is made out.

6 Hence, I pass the following order:

:: ORDER ::

- (i) Bail Application No.1265 of 2017 is allowed;
- (ii) The applicant is directed to be released on bail
in connection with C.R.No. 48 of 2017

registered with MIDC Andheri (E) Police Station, Mumbai on furnishing P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand) with one or more sureties in the like amount;

- (iii) The applicant is directed to report to the MIDC Andheri (E) Police Station, Mumbai once in the month on the first Saturday between 11.00 a.m. to 1:00 p.m. till further orders;
- (iv) The applicant should not tamper with the prosecution evidence;
- (v) The applicant is directed to attend the hearing of the trial Court.
- (vi) Bail Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)