

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1605 OF 2017

AASHFAQ ISLAM KHAN

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.M.S.Mohite i/b. Mr.A.M.Saraogi, Advocate for the Applicant.

Ms.P.P.Shinde, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 15th NOVEMBER 2017

P.C. :

1 The applicant/accused in Crime No.304 of 2016 registered with Police Station Kandivali, for offences punishable under Sections 302, 324 read with 34 of the IPC, registered at the instance of Sajjak Khan, by this application, is seeking his release on bail.

2 Heard the learned advocate appearing for the applicant/accused. He argued that two of the co-accused are already released on bail. Evidence of the prosecution is not consistent with the medical evidence. The finding of the learned Sessions court that it is the present applicant/accused who had given fatal blows to the deceased may not be correct in the wake of statements of witnesses as well as the First Information Report (FIR). The incident does not demonstrate commission of offence punishable under Section 302 of the IPC as it took place in a heat of passion on a sudden quarrel.

3 The learned APP opposed the application by pointing out the FIR as well as statements of witnesses.

4 I have carefully considered the rival submissions and also perused the entire charge-sheet.

5 First Informant Sajjak Khan along with his brother Salauddin are doing the business of melting plastic scraps and

selling it in a shop block, owned by them. Adjacent to their shop block, present applicant/accused Aashfaq and his brothers Ismail and Sohail carry on the business of purchasing and selling the scrap.

6 According to the prosecution case, if the vehicle engaged for transporting the material from the shop block is erroneously parked in the front of shop block of applicant/accused Aashfaq as well as his brothers, then they all used to quarrel with First Informant Sajjak and his brothers.

7 According to the prosecution case, on 20th August 2016, the prosecution party had hired a tempo for transporting the scrap. Mushtaq Khan (since deceased) was the driver of that tempo. Mushtaq Khan had parked that tempo in front of the shop block of Imtiyaz, Aashfaq and Sohail. Upon seeing the parked tempo, Imtiyaz, his brother Aashfaq (present applicant/accused) and Sohail Khan came out of their shop block and started quarreling with Mushtaq. During the course of quarrel, when First

Informant Sajjak was attempting to intervene, it is alleged by the prosecution that present applicant/accused Aashfaq ran inside the shop to bring an instrument called as Bami and gave blows of that Bami on chest and stomach of Mushtaq. It is further alleged that co-accused Imtiyaz whipped out a knife and threatened First Informant Sajjak and gave blow of that knife on left thigh of Sajjak. Another co-accused Sohail Khan assaulted Salauddin by means of a chair.

8 Statements of prosecution witnesses are in tune with the FIR lodged by Sajjak. Sajjak has reported to the police, on the day of the incident about the incident, which is narrated by me in the foregoing paragraphs.

9 Postmortem report of Mushtaq shows that he had suffered three punctured stab injuries. One such injury had punctured his heart through and through.

10 Bami is an instrument alike an icepick which causes a penetrating puncture wound. Prima facie, it is seen that injuries caused by Bami resulted in the death of Mushtaq. Hence, at this stage, when papers of investigation show that during the course of the quarrel, the present applicant/accused Aashfaq returned to his shop to collect Bami for assaulting Mushtaq, it is not possible to hold that the offence cannot reach up to the one punishable under Section 302 of the IPC.

11 In the result, no case for bail is made out. The application is rejected.

12 Needless to mention that considering the fact that the trial is ripe for hearing, the learned trial court is requested to expedite the trial and to decide the same within a period of eight months from the date of receipt of this order. All these observations are prima facie observations having no bearing on the trial.

(A. M. BADAR, J.)