

Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1626 OF 2017

Amjad K. Makrani ...Applicant

Versus

The State of Maharashtra ...Respondent

Mr. Saurabh K. Raut, a/w Mr. Ajinkya Jaibhave, for the
Applicant.

Mr. A.P. Palkar, A.P.P. for the State/Respondent.

CORAM: T.V. NALAWADE, J

DATED: 18th August 2017

PC:-

1. The Application is filed for bail. Both sides are heard. Papers of investigation were made available to this Court for perusal.

2. The charge sheet is filed in Crime No.288 of 2012 registered in Bhadrakali Police Station, Nashik, for the offences punishable under Sections 302, 307, 323, 326, 504, 506 r/w 34 of Indian Penal Code and Sections 4 and 25 of the Arms Act against three persons, who were arrested and present Applicant was absconding on the date of filing of the charge sheet. The incident took place on 21st December 2012 and present Applicant came to be arrested

after one year of the incident. The statements made show that he is an Advocate and he is brother of accused nos.1 and 2, who used dangerous weapons. FIR was given by Shahebaj Shanawaz Shaikh, cousin of deceased Riyaz Shaikh. On 21st December 2012 at about 3.30 pm Shahebaj had a quarrel with accused Anjum Makrani as Shahebaj parked his auto-rikshaw in front of the shop of Anjum. The incident in question took place at about 5.00 pm. The aforesaid incident was disclosed by Shahebaj to deceased Riyaz. Allegations are made that when deceased was returning with Iqbal to home, in front of shop of Anjum Makrani he was intercepted and all of a sudden Anjum Makrani, Arshad Makrani, Makdumraja alias Danish Makrani and present Applicant Amjad Makrani assaulted him. Anjum used chopper and Arshad used knief. In the FIR there is no specific allegations of use of weapon by the present Applicant, but allegations are made that all the four were present together and they were together assaulting the deceased. There are statements of eye witnesses showing the involvement of present Applicant in the incident. Those show the active participation of the Applicant in the incident for use of Section 34 of Indian Penal Code.

3. The post-mortem report shows that death took place after sometime of the admission of the deceased in the hospital. The MLC shows that as many as five major injuries were inflicted which were stab injuries caused by using force and there were cuts on the internal organs also. All the injuries are described as grievous. The death took

place due to multiple stab injuries and injuries caused to kidney. The stabbing was done from backside also. There is circumstantial evidence against the three accused who were arrested immediately and injuries were found on their persons showing that some incident did take place as described.

4. The learned Counsel for the Applicant submitted that no weapon was used by the Applicant and there is no other circumstantial evidence against the Applicant though there may be motive and so the Applicant is entitled to get bail. The contention with regard to absence of circumstantial evidence cannot be accepted in favour of the Applicant due to other circumstances that he remain absconding for about one year. That circumstance can be used against him and it is not open for the Applicant to say that there was no blood on his clothes or he did not sustain any injury in the incident. The attention of the Court was drawn to the substantial evidence given by the eye witnesses and in the circumstantial evidence, one eye witness like Shahebaj has stated that during incident he was held by present Applicant to prevent his intervene in the incident. That part of the evidence needs to be appreciated by the Trial Court and in bail application this Court is not accepted to appreciate the substantial evidence. It can be said that the case is part-heard. It needs to be left to the Trial Court to decide the case itself. Due to aforesaid circumstances this Court holds that bail cannot be granted in favour of the Applicant.

5. In the result, the Bail Application stands rejected.

(T. V. NALAWADE, J.)