IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1622 OF 2016

1. Bilkis Gulam Kirkire)
2. Muzzamil Moinuddin Kirkire) ... Applicants
Vs.
The State of Maharashtra … Respondent

Mr.Niranjan S. Mundargi,Advocate for the applicants.
Mr.Ajay Patil,APP, for the State.

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 19th January, 2017.

P.C.

Heard. This is an application under Section 439 of Cr.P.C. The applicants herein are arersted on 30.1.2016 and 31.1.2016 respectively in Crime No.28 of 2016 registered at Mahim Police Station, Mumbai. The investigation is completed and charge sheet is filed against the accused on 16.3.2016 for the offences punishable under Sections 302, 143,144, 147, 148 and 149 of the Indian Penal Code.

2. It is the case of the prosecution that on 29.1.2016, Iqbal Sattar Shaikh lodged a report at the police station alleging therein that on that day, they had been to Memon Hall as there was a marriage of their relative. Just near the venue at Afzal Tea House, Muzzamil was allegedly staring at Asif @ Bada papa. He had questioned the said gesture. There was a verbal

altercation between both of them. At about 5.25 p.m., Asif had informed the first informant that he was going to offer prayers at the mosque. Within no time the first informant had seen a crowd, he ran towards the crowd and there he saw that Asif @ Bada Papa had fallen in a pool of blood. He was taken to the hospital. According to the prosecution, the applicant No.1 had assaulted Asif on his back with sticks and the applicant No.1 was carrying a knife with him, his father had snatched the knife from the applicant No.2 and assaulted Asif on his neck. Asif had succumbed to the injuries. The body was sent for autopsy. Column No.17 of the post-mortem notes would indicates that the decesed Asif had sustained a CLW admeasuring 6 cm x 2 cm x 6 cm over left neck region 1 cm below left angle of mandible, margins sharp, the internal jugular vein was cut on left side and there was a fracture of C5 and C6 vertebrae. The other 3 injuries were in the nature of abrasion on left knee and dorsum of right hand.

3. The learned counsel for the applicant submits that on the basis of the report of Iqbal Sattar Shaikh, Crime No.28 of 2016 was registered. It is submitted that at about the same time, Moinuddin, who happens to be the father of the present applicant No.2, had also lodged an FIR at the same police station alleging therein that on 29.1.2016 at about 6.20 p.m., his son

Muzzamil had called upon him and informed him that being aggrieved by the quarrel between him and Asif two months prior to the date of incident, Asif had come near Subhani Building and threatened of dire consequences. He called his father immediately. His father had obliged. They rushed to the spot in front of their own house. At that time, they had seen that Asif was armned with a big knife and the other persons were armed with sticks. There was a verbal altercation and soon Asif had assaulted his son Muzzamil i.e. applicant No.2 with the knife on his neck. Moinuddin had also sustained injuries on his elbows. According to him, in the course of altercation, all three i.e. deceased, Moinuddin and Muzzamil had fallen on the ground and in the course of altercation, his son Muzzamil had sustained grievous injuries on his neck and he had sustained bleeding injuries. on the basis of the said report of Moinuddin, Crime No.29 of 2016 is registered at Mahim Police Station against Bada Papa @ Asif (deceased), Iqbal, Faisal and one unknown woman for the offences punishable under Sections 326, 324, 504 read with Section 34 of the Indian Penal Code. The case against Asif @ Bada Papa would stand abated due to his death. However, Iqbal, Faisal and the other woman would have to face trial in Crime No.29 of 2016.

4. Perused the photographs annexed to the petition. It appears that the applicant No.2 had sustained grievous injuries on his neck. The said injuries were sutured. The father of the applicant No.2 had also sustained injuries.

5. The learned counsel for the applicant submits that in fact, it was Asif @ Bada Papa who was armed with the weapon and had been to the house of the applicant No.2 in order to cause hurt to him. The altercation between both the groups is an admitted position due to the registration of FIR against the deceased persons also. As on today, the prosecution has not been able to give any explanation for the injuries sustained by applicant No.2. That they are also being prosecuted in the cross case. The learned counsel for the applicant rightly submits that none of the eye-witnesses have stated that the applicant No.2 was carrying a knife. However, it is stated that Moinuddin had snatched the knife from Muzzamil i.e. applicant No.2. At this stage, it would not be necessary to address on the said issue.Suffice it to say that in the same incident, the applicant and his father had sustained injuries. The father of the applicant No.2 has stated that all three of them had fallen on the ground. Injury Nos. 2, 3 and 4 sustained by the deceased-Asif could be attributed to the said

incident of falling. Applicant No.1 happens to be a woman. She is more than 68 years old. The post-mortem notes do not indicate specifically that the deceased had sustained any injuries by stick. As far as applicant no.2 is concerned, the photographs as well as the first information report would clearly show that he had sustained injuries on his neck by a knife. The learned counsel for the applicant fairly submits that the applicant himself was injured and that it would be a matter of trial as to who was the aggressor.

6. Taking into consideration all these aspects, this Court is of the opinion that the applicants deserve to be enlarged on bail. However, the co-accused, including Moinuddin shall not claim parity with the present applicants.

7. The observations herein are restricted to an application under Section 439 of Cr.P.C. and shall not be taken into consideration for the purpose of quashing of FIR, discharge application or at the time of trial.

O R D E R

(i) The application is allowed.

(ii) The applicants be enlarged on bail on each furnishing P.R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount.

The application is allowed and disposed of.

(SMT. SADHANA S.JADHAV, J.)