

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2051 OF 2017

Mr.Hasan s/o. Anwar Ali Shaikh ... **Applicant**

V/s.

The State of Maharashtra ... **Respondent**

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Mr.Sandeep Maurya, Advocate for the Applicant.

Mr.S.V.Gavand, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 2nd NOVEMBER 2017.

P.C. :

1 The applicant/accused in Crime No.382 of 2015 registered with Police Station, Nirmal Nagar, Mumbai for offences punishable under Sections 307, 141, 143, 144, 147, 148, 149, 323, 504 and 506 of the Indian Penal Code, by the instant application, is seeking his release on bail after filing of the charge-sheet.

2 Heard the learned Advocate appearing for the applicant/accused. He argued that in all eight accused are already released on bail and most of them are released by this Court. He drew my attention to the Bail Orders in respect of accused Shabbir Shaukat Husain Shaikh, Imran Kaisar Khan, Rizwan @ Guddu

Nazir Shaikh, Shabrez Zulfikar Shaikh and Mohd. Ayub Abdul Karim Shaikh. With the aid of these Orders, the learned Advocate appearing for the applicant submitted that on the principle of parity, the applicant is also entitled to be released on bail.

3 The learned Additional Public Prosecutor vehemently opposed the application by contending that the charge-sheet reveals that all accused persons have formed an unlawful assembly with an common object of murdering the victims of the crime in question because of commission of crime of murder of their relative namely Nasir Shaikh on the day of incident itself. The learned Additional Public Prosecutor argued that common object of the unlawful assembly can be gathered from the acts which members of such assembly commits as a result thereof. According to the learned APP, statement of injured Prashant as well as the FIR lodged by Sagar Narvekar points out formation of unlawful assembly with common object. The learned APP further argued that as it is seen that the present applicant was member of unlawful assembly formed with common object of commission of murder so as to take revenge of death of Nasir Shaikh, the role played by him as well as the co-accused in the incident pales into insignificance and mere membership of unlawful assembly makes the applicant liable for offence punishable under Section 302 of the Indian Penal Code and as the offence is punishable with either death or imprisonment for life, the applicant is not entitled for bail.

4 I have considered the rival submissions and also perused the entire charge-sheet. The incident in question took place in the intervening night of 21/12/2015 and 22/12/2015. In the night itself, another incident of murder took place. Dinesh Rajge – relative of Vikas Kamble (since deceased) had murdered a person from locality named Nasir Shaikh. Hence, relatives of Nasir Shaikh and his sympathizers started searching for the murderer and in that process, they came across First Informant Sagar Narvekar and his friends namely Prakash Naik and Vikas Kamble (since deceased). The accused persons including the present applicant then assaulted the trio by means of fists and kick blows, stones and stone slabs. The prosecution averred that even when the victims were extracting themselves from the clutches of the accused persons, the accused persons were chasing them and were assaulted them. This happened despite intervention of the police officials. In the result, Vikas Kamble succumbed to injuries suffered by him whereas his friend namely Prakash Naik and Sagar Narvekar suffered various injuries. Sagar Narvekar then lodged report while taking treatment at the hospital, which resulted in registration of crime in question.

5 The learned Advocate for the applicant has placed reliance on Orders passed by this Court releasing the accused persons namely Mohd. Ayub Abdul Karim Shaikh, Shabbir Shaukat Husain Shaikh, Imran Kaisar Khan, Rizwan @ Guddu Nazir

Shaikh, Shabrez Zulfikar Shaikh. All these accused persons are released on bail by this Court. Co-accused Darial Devid Maridas is released on bail by the learned Additional Sessions Judge. Role played by these accused in the incident is similar to the role attributed to the present applicant. In this view of the matter, the applicant/accused against whom evidence of similar nature is available is entitled to the same treatment on the principle of parity. Therefore, the Order :

- (i) The Application is allowed.
- (ii) The applicant - Mr.Hasan s/o. Anwar Ali Shaikh is directed to be released on bail in connection with C.R.No.382 of 2015 registered with Nirmal Nagar 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 Nirmal Nagar Police Station, Mumbai on first Saturday of every month between 11.00 a.m. to 1.00 p.m. till further Orders;
- (iv) The applicant shall not temper with the prosecution witnesses;

(v) The applicant shall attend all dates of hearing before the trial Court;

(vi) The application stands disposed of accordingly.

(A.M.BADAR J.)