

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1883 OF 2016

Mohd. Ayub Abdul Karim Shaikh ...	Applicant
Vs.	
The State of Maharashtra ...	Respondent

Ms. Anjali Patil a/w Mr. Arun Rajut, Advocate for the applicant.
Mrs. P.P. Shinde, APP, for the State.
PSI Ashok Nikam, Nirmal Nagar Police Station present.

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 16th February, 2017.

P.C.

Heard. This is an application under Section 439 of Cr.P.C. The applicant herein is arrested on 30.12.2015 in C.R. No.382 of 2015 registered at Nirmal Nagar police Station. The investigation is completed and charge sheet is filed against the present applicant and others for the offences punishable under Sections 302, 147, 148, 149, 307, 323 504 and 506 of the Indian Penal Code.

2. It is the case of the prosecution that on 22.12.2015, one Sagar Narvekar lodged a report at the police station alleging therein that on 25.12.2015, he had met his friends i.e. Prashant Naik and Vikas Kamble. They had gone for a stroll at about 11.30 p.m. Suddenly, they were accosted by some boys i.e. Hasan, Sikandar, Arshad, Guddu, Savbbir etc.

The elder son of Nasir had threatened of dire consequences. They were asking for the whereabouts of one Deenu Rajge. The first informant and these associates i.e. Prashant Naik and Vikas Kamble were assaulted by the miscreants. They were assaulted by iron rod, stone brick, cement tiles etc. That the first informant and his two friends i.e. Prashant Naik and Vikas Kamble had sustained grievous injuries. The first information report was lodged under Section 307 of IPC. That Vikas Kamble had succumbed to the injuries on 30.12.2015 and therefore, Section 302 of IPC was added.

3. According to learned Counsel, the copy of P.M. notes do not form part of charge-sheet. The learned APP, upon instructions, disputes the same. Perused P.M. notes from the file of prosecution. Cause of death is head injury. Learned Counsel submits that the victim had died after 5/6 days. Negligent medical intervention cannot be ruled out.

4. Needless to mention that the name of the present applicant has not been mentioned in the first information report. The supplementary statement of the first informant was recorded on 22.12.2015 and 31.12.2015. The applicant was not named in both the supplementary statements. However, in the statement dated 2.1.2017, the first informant named the present applicant – Mohd. Ayub Abdul Karim Shaikh. The allegation was that he had driven the scooter on the person of the first

informant and the deceased and was abusing the complainant. The cause of death is head injury. In column No.17, there are injuries in the nature of abrasions over the head. The injured was initially taken to V.N. Desai Hospital and then to KEM Hospital. The medical case papers are not placed on record. In all there are four supplementary statements of the first informant. The present applicant was named in the 3rd supplementary statement where the accused applicant was shown to the first informant after his arrest. In view of the peculiar facts of the case, the applicant deserves to be enlarged on bail.

5. At this stage, the learned APP submits that by virtue of Section 173(8) of the Criminal Procedure Code, in January 2017, one more accused has been arrested. Be that as it may, none of the co-accused shall claim parity with the present applicant.

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

ORDER

- (i) The application is allowed.
- (ii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.50,000/- with one or more local solvent sureties in the like amount.

(iii) The applicant shall report to the concerned police station on 1st and 3rd Sunday of each month till framing of charge.

Application stands disposed of.

(SMT. SADHANA S.JADHAV, J.)