

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 2165 OF 2017

Samrulhaq Ayyub Azad Shaikh .Applicant

Vs.

The State of Maharashtra .Respondent

Mr. Husen Shaikh, Advocate, for the Applicant
Mr. Vinod Chate, APP, for the Respondent – State

CORAM : A.S.GADKARI, J.

DATE : 06.11.2017

P.C.

. This is an application under Section 439 of Cr. P.C. for bail in CR No. 36 of 2016 registered with Tala Police Station, District-Raigad under Sections 302, 201 r/w 34 of the Indian Penal Code.

2. It is the prosecution case that co-accused – Kaisar Kasim Shaikh was having extra marital affair with Smt. Amena, wife of Mohd. Nazim Mohd. Yasin Shaikh (deceased) and co-accused – Kaisar Shaikh was harbouring the belief that the deceased – Mohd. Nazim was an obstacle in the said affair. It is the further prosecution case that in the intervening night of 20.10.2016 and 21.10.2016, Kaisar Shaikh, the principal accused and Subhash Yadav called the Applicant and co-accused – Pintukumar Sav in the forest of village Tala, under the

pretext of celebrating a party and drinking liquor. That after having liquor, principal accused – Kaisar Shaikh hit a beer bottle on the head of deceased – Mohd. Nazim and subsequently, inflicted blows with a knife on the neck of deceased. That, at that time, the present Applicant and co-accused – Pintukumar Sav held the hands and legs of deceased and helped co-accused – Kaisar Shaikh and Subhash Yadav in committing the said offences. During the course of investigation, the Applicant came to be arrested on 22.10.2016. After completion of investigation, police have submitted charge-sheet.

3. The record indicates that FIR is lodged by Shri Ganesh Resho Mandal after co-accused – Pintukumar Sav made an extra judicial confession before him pertaining to the commission of the offences. The record further indicates that the statement of Pintukumar Sav (co-accused) has also been recorded under Section 164 of the Code of Criminal Procedure by the learned Judicial Magistrate First Class, Taluka – Mangaon, District – Raigad. It appears from the said statement that the present Applicant and co-accused – Pintukumar Sav were called on mobile phone by principal accused - Kaisar Shaikh to the said Tala forest to celebrate a party. That after drinking liquor, accused – Kaisar Shaikh all of a sudden hit a beer bottle on the head of deceased and thereafter, asked Subhash Yadav to hit beer bottle on the head of

deceased. That when the Applicant and co-accused – Pintukumar Sav started running from the spot, accused – Kaisar Shaikh abused them and threatened that, they also will be killed, if they tried to leave the place and therefore, under the threat of life, the Applicant and co-accused – Pintukumar Sav were forced to held the hands and legs of deceased – Mohd. Nazim and thereafter, accused – Kaisar Shaikh slit throat of Nazim by a sharp knife. Co-accused – Pintukumar Sav has further categorically stated that during the said episode, he alongwith the present Applicant were standing nearby due to fear.

4. After taking into consideration the extra judicial confession of co-accused - Pintukumar Sav and his statement recorded under Section 164 of the Code of Criminal Procedure by the learned Judicial Magistrate First Class, Taluka – Mangaon, District – Raigad, it prima facie appears that co-accused – Kaisar Shaikh and Subhash Yadav are instrumental in committing the said crime of murder of deceased – Mohd. Nazim. It further prima facie appears that the Applicant did not share common intention alongwith Kaisar Shaikh and Subhash Yadav at the time of commission of the said offence under Section 302 of the Indian Penal Code. As noted earlier, the Applicant and co-accused – Pintukumar Sav were put under threat by Kaisar Shaikh and Subhash Yadav and forced to help them in the said crime and therefore, it cannot

be said that they shared common intention alongwith other said two accused persons. The learned counsel for the Applicant submitted that there are no antecedents at the discredit of the Applicant.

5. Learned APP on instructions submitted that the Applicant hails from Bihar and if he is released on bail, he will not be available for trial and may abscond. The said apprehension can be taken care of by imposing stringent conditions. As noted earlier, the Applicant has made out a case for his release on bail.

Hence, the following Order:

- (i) The applicant be released on bail in CR No. 36 of 2016 registered with Tala Police Station, District- Raigad on his furnishing PR bond of Rs.50,000/- with one or two solvent local sureties in the like amount;
- (ii) Before his release from jail, the Applicant shall furnish his document pertaining to his permanent place of residence and also the place where he intends to reside after his release to the Investigating Agency;
- (iii) After his release from the jail, the applicant shall attend the concerned Police Station every 1st Monday of the month between 10.00 a.m. to 12.00 noon till the conclusion of trial;
- (iv) Applicant shall also attend all the dates before the trial

Court;

(v) Any two consecutive defaults in complying with the aforesaid conditions, shall attract the provisions of cancellation of bail;

(vi) Applicant shall not tamper with the evidence and/or influence the prosecution witnesses.

6. Application is allowed in the aforesaid terms.

(A.S.GADKARI, J.)