

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2189 OF 2017

Anwar Hanif Esaki	...	Applicant
V/s.		
The State of Maharashtra	...	Respondent

Mr.Vijay Shankar Tiwari for the Applicant.
Mr.A.D. Kamkhedkar, APP for the Respondent/State.

CORAM : A.M.BADAR J.

DATED : 1st NOVEMBER 2017.

P.C. :

1. Applicant Anwar Hanif Esaki is accused in Crime No.211 of 2015 registered with the police station Kalyan, Tq,Kalyan for the offence punishable under Section 302, 397, 394, 120-B r/w 34 of the Indian Penal Code by this application is seeking his release on bail during the pendency of the trial. The applicant is accused No.3 in the Crime in question. Accused No.1 is Ramesh Kabadi, whereas accused No.2 is Santosh Kamble.

2. Heard the learned advocate appearing for the applicant/accused. He argued that co-accused having similar role namely Santosh kamble has been released on bail by this Court vide order dated 24th July 2017 and hence on the principle of parity the present applicant is also entitled to be released on bail.

3. The learned APP opposed the application by contending that there is evidence of confession of co-accused Ramesh Kabadi and a motor cycle used in the crime came to be seized from relative of the present applicant. The learned APP also relied on statement of Guljar Malik.

4. I have carefully considered the rival submissions and also perused the entire charge sheet.

5. The crime in question is registered on the basis of the FIR lodged by Ramesh Vitthal Kabadi, who is subsequently arraigned as accused No.1 in the crime in question.

6. It is the case of the prosecution that accused No.1 Ramesh Kabadi married Sarika Kabadi (since deceased). Because of this wedlock the couple is having children. The prosecution alleged that because of constant bickering in the married life by his wife Sarika, the accused No.1 Ramesh Kabadi decided to eliminate her. Accordingly he had hatched the conspiracy with the aid of accused No.2 Santosh Kamble and present applicant i.e. accused No.3 Anwar Esaki. He took his wife and children from his house at Ghatkopar on 17.09.2015 on the pretext of going to his native place at Junnar for Ganesh Festival. On the way to Junnar, he stopped the car on the pretext of effecting repairs to its head light. Thereafter, in pursuant to conspiracy hatched by accused persons co-accused Santosh Kamble and present applicant Anwar Esaki rushed on the spot by motor cycle on the pretext of robbing accused No.1 Ramesh and his wife Sarika. They indulged in murderous assault on Sarika. A show of robbery was created and i.e. how the FIR came to be lodged . Ultimately, Sarika succumbed to injuries suffered by her in the incident.

7. Role ascribed to the present applicant and accused No.2 Santosh is virtually the same. According to the prosecution case after the car was stopped by main accused Ramesh they rushed on the spot and indulged in murderous assault on his wife Sarika. Co-accused Santosh is directed to be released on bail by this Court vide order dated 24th July 2017 passed in bail Application No.40 of 2017. With the following observations in paragraph No.5 of the said order:-

"Perused the charge sheet. It is appears that the FIR was lodged against unknown persons. There is no identification parade. It is alleged that the ornaments were handed over by the Applicant to Sarika Kumbhar. In the absence of any direct evidence involving the Applicant as the assailant at the time of incident, it cannot be said on the basis of handing over of the ornaments, that applicant was one of the assailant who had assaulted the deceased. The investigation is complete. The Applicant is in custody since 28th September 2015."

8. The case of the present applicant is standing on the same footing and I see no reason to deny bail to the present applicant by following the principle of parity. Therefore, the following order:

ORDER

- i) The application is allowed.
- ii) The applicant Anwar Esaki, accused in Crime No.211 of 2015 registered with the police station Kalyan, Tq, Kalyan for the offence punishable under Section 302, 397, 394, 120-B r/w 34 of the Indian Penal Code is directed to be released on bail on furnishing PR bond of Rs.25,000/-with one or more sureties in the like amount;
- iii) The applicant is directed to attend the investigating officer of Kalyan Taluka Police Station, District Thane once in a month on

every first Saturday of the month between 11.00 a.m.and 1.00 p.m. till further orders;

iv) The applicant shall not tamper with the evidence and/or influence the witness in any manner whatsoever;

v) The application is disposed of.

(A.M.BADAR J.)