

Anand

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

BAIL APPLICATION NO.2063 OF 2016

Elahi alias Salman Marshaha Shaikh .Applicant

Vs.

The State of Maharashtra .Respondent

Mr.A.P.Mundargi, Senior Counsel i/b. Mr.V.Kolekar, for the Applicant
Ms Veera Shinde, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 08.08.2017

P.C.

. Heard learned counsel for the parties.

2. By this Application, the Applicant seeks his enlargement on bail in connection with C.R.No.334 of 2015 registered with the Nerul Police Station, Navi Mumbai, for the alleged offences punishable under Sections 302, 120B of the Indian Penal Code.

3. Learned counsel for the Applicant submits that the Applicant has been falsely implicated in the said case. He submitted that the

complainant-Jitendra Mhatre (uncle of the deceased), has in the FIR, expressed suspicion on one Mahesh Thakur, who had illicit relations with deceased – Swapnil's wife. He further submitted that although the incident is alleged to have taken place on 01.12.2015, the eye witnesses statements were recorded belatedly i.e. on 07.12.2015. He submitted that not only is there an inordinate delay in recording the said statements, but the said statements are suspect, as none of the so-called witnesses, who were friends of deceased – Swapnil, took him to the hospital or informed the police. He submitted that the deceased's father and brother's statement would only show that the Applicant was having an affair with deceased – Swapnil's wife and nothing more.

4. Learned APP opposes the Application. She submitted that there are eye witnesses, who have seen the assault on Swapnil. She further submits that the CDR record also shows that the Applicant was present at the spot, at the time of the incident and later on, at Karad. He submitted that there is recovery of a motor cycle belonging to the deceased, at the instance of the Applicant.

5. Perused the papers. The incident took place on 01.12.2015 at about 7.00 p.m. It appears that the police had informed, that Swapnil was injured, pursuant to which, the aforesaid complaint was lodged. It appears that initially, suspicion was expressed on one Mahesh Thakur, as co-accused – Sangita (wife of the deceased) had eloped and was staying with Mahesh Thakur for about two months. During investigation, it transpired that Mahesh Thakur was in no way concerned with the said case. It also appears from the statements of witnesses, that the Applicant was having illicit relations with Sangita (wife of the deceased) and that she used to go to Karad to meet him. There are eye witnesses to the said incident dated 01.12.2015 i. e. namely Mehendi Hasan Abdul Alim Shaikh, Ramchandra Ishwarchandra Nahak & Asif alias Sheralam Khalilur Rehman. All the said eye witnesses have specifically stated that the Applicant was present at the spot and had assaulted the deceased alongwith two others. The statements of all these eye witnesses, are consistent. The evidentiary value of the statements of these witnesses will be considered by the trial Court. There is recovery of a motor cycle belonging to the deceased at the instance of the Applicant. The CDR record also shows that the Applicant was present at the spot, where the incident took place and that after the

incident, he had gone to Karad and stayed in a lodge. The Post Mortem Report shows that the deceased had sustained as many as 13 injuries. The cause of death is stated to be “head injury due to multiple hard and blunt impacts”.

6. Considering the *prima facie* material on record *qua* the applicant, this is not a fit case to enlarge the Applicant on bail. Hence, the Application stands rejected.

7. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

(REVATI MOHITE DERE, J.)