

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2266 OF 2017

SAJID HAMID QURESHI)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Dilip Shinde i/b. Mr.Harshal Mirashi, Advocate for the Applicant.

Ms.PN.Dabholkar, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 10th NOVEMBER 2017

P.C. :

1 The applicant/accused in Crime No.91 of 2017 registered with Police Station Rabale, for offences punishable under Sections 302, 323, 504 read with 34 of the Indian Penal Code (IPC), by this application, is seeking his release on bail, after filing of charge-sheet.

2 Heard the learned advocate appearing for the applicant/accused. He argued that the First Information Report (FIR) in question is lodged by Ismail Shaikh Qureshi, who is brother-in-law of the deceased, and it contains embellishments to implicate the applicant/accused in the offence punishable under Section 302 of the IPC with false accusation. Deceased Alim Abdul Wahid Qureshi suffered a fall during quarrel and had sustained head injury.

3 The learned APP opposed the application by placing reliance on the FIR statement of Ismail Shaikh Qureshi apart from seizure of a knife and postmortem report.

4 Undisputedly, the First Informant Ismail Qureshi is the sole eye witness to the incident in question. According to the prosecution case, the incident in question took place at about 10.00 p.m. on 28th March 2017 in front of Lucky Chicken and Mutton Shop. The First Informant Ismail Qureshi was running a meat shop with the help of his brother-in-law Alim Qureshi (since

deceased) near Gavdevi Temple, Airoli. The present applicant /accused Sajid Qureshi and co-accused Kadir Qureshi are brothers. They are also running a meat shop under name and style Lucky Chicken and Mutton Shop. It is owned by the present applicant/accused and his brother i.e. co-accused Kadir Qureshi. At that time, present applicant/accused Sajid Qureshi abused Alim Qureshi. Alim Qureshi (since deceased) thereupon questioned present applicant/accused Sajid Qureshi. Then present applicant/accused Sajid Qureshi and co-accused Kadir Qureshi rushed on the person of Alim Qureshi (since deceased). They started beating Alim Qureshi by hands. The First Informant Ismail Qureshi claimed that then he went to intervene. At that time, present applicant/accused Sajid Qureshi took a knife meant for cutting meat and gave blow thereof from blunt side on head of Alim Qureshi. Because of this blow, Alim Qureshi became unconscious and fell down.

5 Seizure panchnama shows that weapon allegedly used in the offence was having length of 24 cm and width of 7 cm. It

seems to be a heavy weapon meant for cutting meat. In the light of this evidence against the present applicant/accused, if postmortem report of deceased Alim Qureshi is perused, then it is seen that the Autopsy Surgeon had not found any surface wound or injury on the dead body of Alim Qureshi. If really deceased Alim Qureshi was hit on his head by the blunt side of a heavy weapon meant for cutting the meat, then in normal course it was expected to have a contused lacerated wound on head of the deceased. Column 17 of the Autopsy Report candidly shows that there was not a single surface wound on the dead body. This, prima facie, creates a doubt in the prosecution case and also indicates the possibility of suffering haemorrhage by the deceased due to his fall.

6 If the blow by blunt side of the knife on head is ignored, then what remains is assault on the deceased by the applicant/accused and the co-accused by using hands. Here also, there is no surface injury nor corresponding internal injury on the deceased, except under scalp haematoma. In the wake of this

evidence against the present applicant/accused, his further pre-trial detention is not warranted. As such, the order :

ORDER

- i) The application is allowed.
- ii) The applicant/accused in Crime No.91 of 2017 registered with Police Station Rabale, for offences punishable under Sections 302, 323, 504 read with 34 of the IPC is ordered to be released on bail on his executing P.R.Bond in the sum of Rs.15,000/-, and on furnishing surety in like amount.
- iii) The applicant / accused should not tamper with prosecution evidence.
- iv) The application is disposed of.

(A. M. BADAR, J.)