

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1757 OF 2017

SHAHEED MOHAMMED SHAMSHER)
SHAIKH @ KALIA)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Ms.Raziya Shaikh a/w. Mr.Avinash Oval, Mr.Sandesh B. Mani
Khedkar, Advocate for the Applicant.

Ms. Anamika Malhotra, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 6th OCTOBER 2017

P.C. :

1 By this application under Section 438 of the Code of Criminal Procedure, the applicant who is accused in Crime No.319 of 2016 registered with Shivaji Nagar Police Station, for offences punishable under Sections 302, 323 read with 34 of the Indian Penal Code (IPC), so also under Sections 37 and 135 of the Maharashtra Police Act, is seeking pre-arrest bail.

2 Heard the learned advocate appearing for the applicant / accused. She argued that the present applicant / accused, as seen from the charge-sheet, was called subsequently by the co-accused when hot discussion took place between co-accused persons and members of the prosecuting party. She further argued that witnesses are ascribing different role so far as the present applicant / accused is concerned. Shabnam, who is wife of Akbarali, has stated that the present applicant / accused has assaulted Akbarali by means of fist and kick blows. Some other witnesses are stating that Akbarali was assaulted by the present applicant / accused by means of a brick. The learned advocate further argued that, co-accused who are ladies, are already granted bail by the learned Additional Sessions Judge. No overt act is attributed to the present applicant / accused, so far as assault on deceased Bakarali is concerned. Therefore, the applicant / accused deserves anticipatory bail and his custodial interrogation is not warranted.

3 The learned APP argued that the applicant / accused is absconding and considering the nature of crime, he is not entitled for anticipatory bail.

4 I have carefully considered the submissions so advanced and perused papers of investigation. The crime in question took place on 8th August 2016. First Information Report (FIR) thereof came to be lodged on the very next day by Shamim Ansari – brother of deceased Bakarali. According to the prosecution case, applicant / accused Shaheed was indulging in theft of electricity and supply thereof to the hutment areas by laying cable network. For effecting repairs of that cables, his employees co-accused Rizwan and Jaffer used to climb on roof of huts of the locality. On 8th August 2016, co-accused Rizwan climbed on the hut of members of the prosecuting party. They took exception to this act. Upon that, Rizwan came down and started threatening members of the prosecuting party. Other co-accused also joined him. Applicant / accused Shaheed was called on the spot. Then, according to the prosecution case, co-accused

Rizwan took out a khanjar and gave blows thereof to deceased Bakarali. Applicant / accused Shaheed assaulted Bakarali as well as Akbarali by means of brick. The other accused also assaulted members of the prosecuting party. Bakarali died in this incident and cause of his death is hemorrhagic shock due to multiple (two) stab injuries.

5 It is apparent that neither statement of Akbarali nor his injury certificate is found on record of investigation, but still, witnesses are attributing several acts to the present applicant / accused. The incident is a fall out of the illegal business which was being conducted by the present applicant / accused and the main culprit is his employee – co-accused Rizwan. The incident of murder of Bakarali took place in presence of the present applicant / accused. The applicant / accused, as stated by witnesses, has assaulted Akbarali. Ultimately, question during the course of trial will be whether the applicant / accused was harbouring common intention with co-accused in order to eliminate Bakarali or whether acts of each accused was

independent act which sprung out instantaneously. However, prima facie, it is seen from papers of investigation that the applicant / accused had committed overt act during the course of commission of murder of Bakarali by the co-accused. The act was done by co-accused Rizwan for facilitating business of the present applicant / accused.

6 In this view of the matter, considering the nature of offence and evidence collected by the Investigator, prima facie showing common intention harboured by the present applicant / accused, no case for pre-arrest bail is made out.

7 The application is, therefore, rejected.

(A. M. BADAR, J.)