

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

BAIL APPLICATION NO.2171 OF 2016

Mohasin @ Manya Abbas Shaikh ... Applicant

Vs.

The State of Maharashtra .. Respondent

Mr.R.A. Zade for the Applicant
Mr.S.H. Yadav, APP, for Respondent – State

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: JANUARY 17, 2017

P.C. :

1. This application is moved for bail under section 439 of the Code of Criminal Procedure, as the applicant/accused is facing charges under section 302 r/w section 34 of the Indian Penal Code in C.R. No.22 of 2014 registered at Khadak Police Station, Pune. The FIR was given by one police officer, namely, Narendra Vinayak Baisane on 5.2.2014 as at the time of patrolling, he received information that one body of one unknown person was lying in one PMC colony. The officer after visiting the spot found a dead body in a severely injured condition. After registration of the offence, on investigation, it was found that on 4.2.2014, one co-

accused Mujammil @ Murgya Shabbir Mokashi was celebrating his birthday with his friends and were dancing. At that time, the deceased Rushikesh Darekar took objection and on that account, the applicant/accused Murgya and his three friends started abusing and assaulting Rushikesh. The ladies in the vicinity tried to intervene and told the applicant/accused and others not to assault him, however, the applicant/accused and the other accused kept on assaulting Rushikesh with stones, bricks, fist blows and kicks. Thereafter, they all pulled him and put him in the dickie of the car and went away. Thereafter, on the next day, on 5.2.2014, a dead body of Rushikesh was found by the complainant police officer. The applicant/accused was arrested on 10.2.2014 and hence, this application.

2. The learned Counsel for the applicant/accused has submitted that the applicant/accused has not committed any offence. There is no direct evidence when Rushikesh was killed. He submitted that the applicant/accused is in prison since last two years. Considering this, he is to be bailed out.

3. Learned Prosecutor has opposed the application. He has submitted that this Court by order dated 9.1.2015 in the same

C.R., has refused bail to the co-accused Azim Shaikh, who is also attributed a similar role.

4. Perused the complaint so also the statements of Lata Sathe, Laxmi Divte, Janabai Advade, Tushar Gulab Kamble, Tushar Gopinath Kamble. All these persons have witnessed the quarrel between the deceased Rushikesh and the co-accused and the applicant/accused. They all have seen the applicant/accused and the co-accused assaulting Rushikesh with stones, bricks and kicks. They also witnessed all the accused including the applicant/accused taking away Rushikesh in the car and thereafter the body of Rushikesh was found on the next day in the morning. The Bail Application of the co-accused, who was also attributed a similar role was rejected by this Court on 9.1.2017.

5. In the circumstances, there is *prima facie* evidence against the applicant/accused and hence, I am not inclined to grant bail. Bail Application is rejected.

(MRIDULA BHATKAR, J.)