

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

CRIMINAL BAIL APPLICATION NO.2186 OF 2016

Shri Ayza Karim Shaikh

.... Applicant

versus

The State of Maharashtra

... Respondent

Mr. Gajanan Savagave, Advocate for the Applicant.

Mr.Y.M. Nakhwa, APP for the State/Respondent.

CORAM : MRS.MRIDULA BHATKAR, J.

DATE : 13th JANUARY, 2017.

P.C. :

1. This application is moved for bail by the applicant/accused. The applicant/accused is prosecuted for the offences punishable under section 302 r/w 34 of IPC and section 37 (1) (3) of the Maharashtra Police Act and Section 4 (25) of the Arms Act in C.R.No.167 of 2015 with Swargate Pune Police Station. The offence is registered on 23.07.2015 at the instance of Taufiq Salim Shaikh, eyewitness to the incident, who stated that he was aware that on 19/07/2015 co-accused and deceased Haider had verbal altercations. On 23/07/2015 when he was standing alongwith friends Juned, Asif and Faruq at around 08.00

p.m. near Ganibaba Darga and chitchatting, they all noticed co-accused Mehboob sitting in Auto Rickshaw near the gate of Gultekadi Nursing Home and the co-accused, who is brother-in-law of Mehboob, was standing on the either side of the road and they were giving some signals to each other. At around 08.30 p.m., deceased Haider arrived there in a bus. As he started walking towards his house, Mehboob gave him blow with chopper like weapon (Palghan). The brother-in-law of Mehboob and other two boys came running towards Haider. They all were armed with chopper like weapon (Kukri). They assaulted Haider with the weapons and then ran away in Rickshaw, which was driven by co-accused brother-in-law of Mehboob. The complainant Taufiq and his friend took Haider to the hospital for treatment. However, he was declared dead. Thereafter he went to police station and gave information of the incident and the offence was registered as C.R. No. 167 of 2015 under section 302 r/w 34 of IPC and section 37(1)(3) of the Maharashtra Police Act and section 4(25) of the Arms Act with the Swargate Police Station, Pune. The applicant/accused was arrested on 28/07/2015. Hence this application for bail.

2. The learned counsel for the applicant/accused has submitted that the applicant/accused is innocent. The name of the applicant/accused is not mentioned in the complaint, so also in the statement of the eyewitness. There is no recovery from the applicant/accused. Though clothes were recovered and found blood stained, C.A. Report is awaited. The applicant/accused has not committed any offence, much less the offence of murder. He further submitted that in the test identification parade, which was conducted on 28/08/2015 i.e. one month after the arrest of the applicant/accused, no specific role is attributed to the applicant/accused. Hence, bail be granted to the applicant/accused.

3. The learned A.P.P opposed the application and has relied on the FIR and statements of the other eyewitnesses. He further submitted that apart from recovery of the blood stained clothes from the accused on 29/07/2015 the chopper like weapon was also recovered at his instance on 31/07/2015. The learned A.P.P further submitted that the applicant/accused has actively assaulted the deceased. He further relied on the test identification

parade, where all the eyewitnesses have identified the accused as he was present at the time of incident. He further relied on the P.M. Report and pointed out that the deceased had died due to multiple injuries and which were incised wounds.

4. Perused the complaint and the statements of four eyewitnesses. It appears that the incident had taken place at around 08.30 p.m. near the place where the eyewitnesses were standing. The complainant and eyewitnesses knew the co-accused Mehboob and his brother-in-law who assaulted the deceased alongwith other two persons. However, they had seen the two persons and at the time of test identification parade, though they did not attribute the specific role of assault to the applicant/accused, they have identified that this person was present at the time of the assault. There is evidence of recovery of weapon and also blood stained clothes at the instance of the accused. Post-mortem notes disclose that 20-21 injuries were found on the body of Haider, out of which 18 injuries were incised and stabbed wounds all over his body. This shows, prima facie, the manner in which the assault, as described by the eyewitnesses,

might have taken place. There is sufficient prima facie evidence against the applicant/accused. It is a case of murder u/s 302 of IPC. Hence, Bail Application is rejected.

(MRIDULA BHATKAR, J.)