

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2589 OF 2016

1. Imtiyaz Islam Khan	)	
2. Sohail Islam Khan	)	Applicants
Vs.		
The State of Maharashtra	...	Respondent

Mr. A.P.Mundargi, Senior Counsel i/b. Mr. Ashok M. Saraogi, Advocate for the applicants.

Ms. Bhagyashri Gawas, Advocate for the complainant.

Ms. J.S.Lohokare, APP, for the State.

Mr. Ravi Jadhav, PSI, Kabndivli Police Station present.

CORAM: SMT.SADHANA S.JADHAV, J.

DATE : 1st March, 2017.

P.C.

On the last occasion, this Court was inclined to grant bail to the applicant No.2 on the ground that he had not caused any fatal injury to the deceased, but on the spur of moment, he had raised a chair to assault Salauddin. It was apparent that the applicant No.2 had not shared any common intention with Ashfaq Khan and Imtiyaz Khan who had caused fatal injuries to the deceased. This Court had noticed that Salauddin had sustained punctured wound in the epigastrium region and therefore had directed the investigating agency to record the statement of Dr. Ruchir N. Kesaria who had examined Salaudin and issued the certificate.

2. The statement has been recorded. Dr. Kesaria has stated that he had noticed that Salaudin had sustained superficial injury and therefore he was not admitted in the hospital. It is also reiterated that the injuries sustained by Salauddin was hardly muscle deep and therefore he had issued the certificate. Unfortunately, the doctor has not referred to any punctured wound sustained by Salauddin. This Court would not substitute its opinion for the opinion of the medical officer as he would be an expert evidence. It is in these circumstances, the applicant deserves to be enlarged on bail as he had not assaulted Salauddin with any premeditation but it was on the spur of the moment. The applicant No.2 is in custody since August 2016.

3. Taking into consideration the allegations levelled against applicant No.2, nature of injury, the explanation given by Dr. Kesaria, this Court is of the opinion that the applicant deserves to be enlarged on bail.

4. Needless to state that when the Court was not inclined to grant bail to applicant No.1, the learned counsel for the applicants had withdrawn the application as far as applicant No.1 – Imtiyaz Islam Khan is concerned.

5. The observations are restricted to an application under Section 439 of Cr.P.C. and the same shall not be taken into consideration for the purpose of quashing application, discharge application or at the time of trial.

ORDER

- (i) The application is allowed.
- (ii) The applicant No.2 – Sohail Islam Khan be enlarged on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or more local solvent sureties.
- (iii) The applicant shall not visit or reside in Ganesh Nagar of Kandivli area till conclusion of the trial.

Application stands disposed of.

(SMT. SADHANA S.JADHAV, J.)