

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

**BAIL APPLICATION No. 1335 of 2018.
WITH
CRIMINAL APPLICATION No. 998 of 2018**

Khwaja Kalandar Shaikh	..Applicant.
Vs	
State of Maharashtra	..Respondent.

Mr. Manoj M. Gadkari for applicant in ABA/1335/2018.
Mr. Umesh Mankapure for Intervener in APPP/998/2018.
Mr. S.S.Pednekar, APP for the State.

**CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATE : 26TH SEPTEMBER, 2018**

P.C:-

1) This is an application under Section 439 of Criminal Procedure Code filed by the aforesaid applicant who is facing trial in Sessions Case No. 117 of 2017 pending on the file of the learned Additional Sessions Judge, at Sangli, arising out of Cr. No. 26 of 2017 registered at Mahatma Gandhi Police Station Miraj for offences punishable under Sections 302, 307, 142, 147, 148, 504 read with section 149 of Indian Penal Code.

2) Heard Mr.Gadkari, learned counsel for the applicant, Mr. Mankapure, learned counsel for the intervener-first informant and Mr. S.S.Pednekar, learned APP for the State. Perused the records and considered the submissions advanced by the learned Counsels for the respective parties.

3) The aforesaid crime came to be registered, pursuant to the first information report lodged by one Juber Ibrahim Chaudhary. The first information report prima facie reveals that on 7th April, 2017 at about 8:30 p.m., said Juber Ibrahim, his father Ibrahim and brother Arif had gone to Idgah chowk to celebrate birthday of one Hussein Kunnure. It is alleged that the co-accused Naushad had abused Ibrahim, while he was talking to one Raju Patel. At about 9:00 p.m., the appellant and the co-accused abused Ibrahim and his sons Arif and Juber while they were proceeding towards their residence after attending the birthday party, upon being questioned, the applicant and co-accused rushed towards them, the applicant caught hold Arif and Samir gave a blow of an iron rod on his head and also on the head of Ibrahim. It is alleged that the other accused had also assaulted them by kicks and blows. Said Arif and Ibrahim sustained injuries and they were shifted to the Wanless Hospital, Miraj for medical treatment. Said Ibrahim expired as a result of the injuries sustained by him in the said incident.

4) A perusal of the postmortem report prima facie indicates that Ibrahim had sustained one injury on right frontal aspect and that he had expired as a result of the said head

injury. Similarly, the medical certificate also prima facie indicates that Arif had sustained CLW on right frontal parietal region. It is thus evident that deceased as well as the injured person had sustained one injury each. The alleged injury was inflicted by Samir who has already been granted bail.

5) The records do not prima facie indicate that the present applicant was armed with any weapon. The only role attributed to the applicant was that he had caught hold Arif and that thereafter Samir had inflicted a blow of iron rod on the head of said Arif. The question whether said act would attract vicarious liability as contemplated under Section 149 of IPC is a matter to be decided on merits in the course of trial.

6) Considering the role attributed to the applicant, in my considered view, the applicant would also be entitled for bail on the ground of parity. As regards criminal antecedents, it is not in dispute that the criminal case, arising out of Cr. No. 60/2015 at M.G.Chowk Police Station, Miraj has resulted into acquittal of the applicant. The applicant has no other criminal antecedents. The applicant is a permanent resident of Miraj and there are no chances of the applicant absconding and/or thwarting the course of justice.

7) Considering the above facts and circumstances, the applicant is entitled for bail on the the following terms and conditions.

(i) The applicant be released on bail in Sessions Case No. 117 of 2017 pending on the file of learned Additional Sessions Judge, at Sangli. on his furnishing bail bonds of Rs. 50, 000/- with one or two solvent sureties in the like amount to the satisfaction of the learned Additional Sessions Judge, Sangli.

(ii) The applicant shall attend all the dates before the Trial Court till conclusion of the trial.

(iii) The applicant shall furnish his permanent and temporary addresses, if any, and his contact details to the Investigation Officer.

(iv) The applicant shall not change his residential address without prior intimation to the Investigation Officer.

(v) The applicant shall not interfere with the complainant/first informant, other witnesses and shall not tamper with the evidence in any manner.

8) In view of the above, Criminal Application No. 998 of 2018 for intervention stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)