

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

BAIL APPLICATION NO. 37 OF 2018

Yakub Mohammed Islam Khan

... Applicant

Vs.

State of Maharashtra

... Respondent

...

Mr. Sanjeev Kadam a/w Mr. Prashant Raut I/by Mr. Bhanudas L. Jagtap for the applicant.

Ms. Tripti Shetty for the intervenor.

Mr. A.R. Kapadnis APP for the Respondent-State.

Mr. R.D. Husbe, P.I. Andheri Police Station is present.

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CORAM : PRAKASH D. NAIK, J.

DATE : 11th SEPTEMBER, 2018.

P.C.

1. This is an application for bail in connection with C.R. No. 48 of 2017 registered with MIDC Police Station, Mumbai for the offence punishable under Sections 302, 307, 326, 342, 143, 144, 147, 148, 149, 506(ii), 120 (B) of Indian Penal Code
2. The prosecution case is that the complainant is resident of Santacruz (West), Mumbai and is having Tea Stall. The complainant, his brother Wasiullah and one Mr. Shamsuddin Sah are the police informant. The Complainant received an information that 8 to 10 ago crime is registered at Niphad Police Station, Nashik in respect of theft. In the said case , person named

by Soharab has been impleaded as accused and he is absconding. After receiving the information, the complainant and his brother informed this fact to Police Officer Rakesh Pawar of Dahisar Police Station on 31st January, 2017. On the given information the said police officer Rakesh Pawar went to Naigaon and brought one relative of Soharab and after enquiry he was allowed to go. The complainant and his brother were trying to found out whereabouts of Soharab by visiting Naigon. On 3rd February, 2017, the complainant's brother Wasiullah received a phone call from Chinka relative of Soharab. He was called at Bhangarwadi, Subhash Nagar, Andheri (East) and accordingly the complainant and his brother Wasiuallah and person named Shamsuddin reached the said place. The complainant met Soharab, Firoz, Chinka and Shabbir Ali. They asked the complainant and his brother as to why they are after them and warned them not to provide any information to the police. The complainant and his brother Shamsuddin were taken to another place. Two others persons aged about 25 to 30 years were available at that place. After entering the said premises, the complainant, his brother and Shamsuddin were surrounded by the accused. They were armed with iron pipe, iron rod. They assaulted the complainant and

others. The blows were inflicted on hands, legs, stomach and head of the complainant and others. The complainant and his brother and Shamsuddin sustained injuries on their person. After the assault, they were thrown out the gala and the accused went away from the place of incident. The injured persons were lying at the place of incident for a period of two hours. Thereafter, the police van reached on the spot and all of them were taken to the hospital. The brother of the complainant succumbed to the injuries sustained by him. The complainant and Shamsuddin were treated in the hospital. Their statements were recorded on 3rd February, 2017. The FIR was registered on the same day for the aforesaid offences.

3. The applicant was arrested on 15th April, 2017. Initially he was produced before the juvenile court under the impression that he is juvenile. Thereafter he was produced before the regular court. The investigation is completed and the chargesheet has been filed.

4. The applicant preferred an application for bail before the Sessions Court which has been rejected by the Sessions Court on 21st September, 2017. While rejecting the said application, the Court has observed that applicant is specifically named in the First

Information Report. *Prima-facie*, it appears to be a pre-planned murder. Specific role has been attributed to the applicant. Accusations are serious. There is sufficient evidence against the applicant.

5. Learned counsel for the applicant submitted that he has been falsely implicated in this case. First Information Report and the statement of the witnesses referred to the person and participation of one Firoz in the crime. The applicant is being arrested under the belief that he is Firoz who was referred to by the complainant and other witnesses. It is submitted that the document on record clearly indicate that the name of the applicant is Yakub Mohd. Islam Khan and not Firoz. It is submitted that prosecution has proceeded on the basis that applicant's name is Firoz. He submitted that it is case of mistaken identity of the applicant. He relied upon the Adhar Card and the other documents which shows that his name is Yakub Mohd. Islam Khan and not Firoz. It is submitted that other accused namely Parwez Alam Khan Anwarali Khan has been granted regular bail by this Court and one of the accused is being granted anticipatory bail. It is submitted that taking the prosecution case as it is the offence would not amount to murder. The weapon which were allegedly used in the crime

were lying at the spot and deceased and others were assaulted by others. It is further submitted that investigation is completed and the chargesheet has been filed. The applicant is in custody from 15th April, 2017 and no purpose would be served while continuing further detention in custody.

6. Learned APP submitted that accused had committed pre-planned murder. Specific overt act has been attributed to the applicant. It is submitted that although, the applicant has described his name as Feroz, the benefit cannot be given to the applicant accused, as clear role has been attributed to the applicant. He has been identified by the complainant in the identification parade. It is submitted that applicant has assaulted the complainant and others. It is thus submitted that applicant is not entitled for bail.

7. Learned counsel for the intervener also reiterated the submissions advanced by the learned APP. It is submitted that applicant himself has referred to his name as Firoz @ Yakub Mohammed Islam Khan in the application for bail before the Sessions Court as well as in this Court. It is submitted that the applicant and other accused are dangerous persons and in the event if the applicant is granted bail, there is danger to the life of

complainant and other witnesses.

8. I have perused the chargesheet which has been annexed to the application. In the First Information Report dated 3rd February, 2017 it is stated that on the date of incident, applicant and his brother and other relative of the complainant were assaulted mercilessly with the help of iron rod and iron pipe. Injured persons had sustained injuries on account of assault. The brother of the complainant has succumbed to the injuries. It is also apparent from the FIR that after the assault the complainant and other injured persons were thrown out the premises where they were assaulted and they were left at the spot. Subsequently, they were hospitalized by the police. On perusal of the Post Mortem report of the deceased Wasiullah, it is apparent that he has sustained several injuries on his person. It is thus clear that the case of the prosecution clearly makes out the evidence against the accused. He has been attributed specific overt act on account of the information being provided to the police. The complainant and others were taken to the place of assault and after questioning they were assaulted by the accused. As far as alleged dispute regarding identity of the applicant is concerned, it is pertinent to note that identification parade was conducted in which the

applicant has been identified by complainant and witness Shamsuddin Sheikh. The dispute relating to the identity of the applicant can be considered at the time of trial. Presently, there is sufficient evidence against the applicant. The co accused who was granted regular bail had played different role. The applicant is not entitled for parity. In the circumstances, no case for grant of bail is made out against the applicant. Application stands rejected.

(PRAKASH D. NAIK, J.)

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