

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****BAIL APPLICATION NO. 144 OF 2018**

Aabid Mohd. Ali S/o. Amir Mohd. Ali & Anr.Applicants.

Vs.

The State of MaharashtraRespondent.

Mr. Vinay Bhanushali i/by Hasan Pasha Patel for the Applicants.

Ms. A.A. Takalkar APP for the Respondent-State.

Mr. Pandharinath Patil, P.I. , D.B. Marg Police Station, Mumbai.

CORAM : A. S. GADKARI, J.

DATE : 19th JUNE, 2018.

P.C.:-

This is an Application under Section 439 of the Code of Criminal Procedure for bail in CR No. 105 of 2017 dated 16th July, 2017 registered with Dr. D.B. Marg Police Station, Mumbai under Sections 302, 34, 120 (B) of the Indian Penal Code, now culminated into Sessions Case No. 652 of 2017.

2 Heard the learned counsel appearing for the Applicants and the learned APP. Perused the charge-sheet.

3 The name of the deceased is Babulal Saini. The date of alleged incident is 16th July, 2017. The first information report is

lodged by Shri. Ramjilal Saini, the nephew of deceased Babulal Saini. It is the prosecution case that, the Applicants are in the business of sale and supply of spare-parts of speakers at Grant Road Mumbai and initially the deceased was working in the shop of the Applicants. That, the deceased had left the service of the Applicants and started his own business in near vicinity of the shop of Applicants at Grant Road. That, the customers of the Applicants thereafter, started purchasing goods from the shop of the deceased and the Applicants suffered monetary loss thereto and therefore, with a view to eliminate Babulal Saini (deceased), it is alleged that the Applicants called two persons namely Mr. Afzal Shaikh and Mr. Wasim from their native place to commit murder of Babulal Saini. That, the said two co-accused on 16th July, 2017 assaulted Babulal Saini with sharp-edge weapons and committed his murder. During the course of investigation, the Applicants came to be arrested on 18th July, 2017. After completion of investigation, the police have submitted charge-sheet.

4 The present case is based on circumstantial evidence against the Applicants. The circumstance of motive is propounded against both the Applicants and as noted earlier, it is because of the

said deceased started his own business, thereby causing monetary loss to the Applicants, they decided to commit murder of Babulal Saini. It is the further case of prosecution that, the Applicants provided all logistic support to the assailants, who came from their native place and resided at Mumbai in various hotels.

5 As far as the Applicant Aabid Mohd. Ali is concerned, the record indicates that except motive and the allegation that, he has provided logistical support to the assailants, there is no other material on record against him and therefore, he can be released on bail.

6 As far as the Applicant No.2 Shahid Mohd. Ali is concerned, the record indicates that the Applicant No.2 was in contact with the assailants. The prosecution has relied upon the CDR records of the mobile phone of the Applicant No.2 Shahid Ali and the assailant Mr. Afzal Shaikh in that behalf.

The other circumstance put forth against Applicant Shahid Ali is that, he accompanied the assailants to the hotel namely 'Al Aqsa' and made arrangements for their accommodation there. The Manager of the said hotel namely Al Aqsa has identified one of the assailants namely Afzal Shaikh as the person who was accompanied with the Applicant No.2 Shahid Ali, on 20th July, 2017. There is another

circumstance against the Applicant No. 2 Shahid Ali, that the said Applicant from his mobile phone contacted one travel agent and requested him to book two tickets for Jaipur-Mumbai super fast express (Sleeper Coach) and gave the names of the the said persons/travellers as Afzal and Wasim, the alleged assailants.

7 Thus, prima facie there is sufficient material on record to show the complicity of the Applicant No.2 Shahid Ali in the present crime and therefore, he cannot be released on bail, at this stage. The Applicant Shahid is granted liberty to move a fresh Application for bail before the Trial court, if the trial arising out of CR No. 105 of 2017 registered with Dr. D.B. Marg Police Station, now culminated into Sessions Case No. 652 of 2017, does not commence within a period of six months from today.

8 Hence the following order.

- a) Application of Applicant No.2 Shahid Ali is rejected with aforesaid liberty.
- b) Application of Applicant No.1 Aabid Mohammad Ali is allowed on the following terms and conditions.
 - i) The Applicant Aabid Ali be released on bail

in CR No. 105 of 2017 registered with Dr. D.B. Marg Police Station, now culminated into Sessions Case No. 652 of 2017, on his furnishing PR bond of Rs.25,000/- with one or two solvent local sureties in the like amount.

- ii) After his release from Jail, the Applicant shall attend the D.B. Marg Police Station, Mumbai on every first Monday of the month between 11.00 a.m. and 2.00 p.m.
- iii) The Applicant shall also attend all the dates before the Trial Court unless precluded for medical reasons.
- iv) The Applicant shall not tamper with the evidence and/or pressurize the prosecution witnesses.

9 At this stage, the learned counsel appearing for the Applicants submitted that till the time Applicant No.1 Aabid Ali complies with the formalities of furnishing sureties, he may be

released on cash bail.

In view thereof, the Applicant No.1 Aabid Ali is permitted to be released on cash bail for a period of eight weeks from today and during the said period he is directed to comply with the formalities of furnishing sureties.

10 Application is partly allowed, in the aforesaid terms.

11 All the concerned to act on a copy of this Order duly authenticated by the Registry of this Court.

(A.S. GADKARI, J.)