

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.171 OF 2018

Yusufali Mohammad Sajida, Age 42 years,
R/o.Room No.2, Valli Mohammad Chawl,
In front of Tipco Company, Khot Dongri,
Malad (East), Mumbai-400 097
(presently in prison at Thane)

Applicant

versus

The State of Maharashtra through
Dindoshi Police Station

Respondent

Mr.Prashant G. Pandey for applicant.
Mr.Kaushik Mhatre for complainant.
Ms.R.M.Gadhvi, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 12th February 2018

PC :

1. This is an application for grant of bail. The earlier application filed by the applicant was rejected on 19th July 2017 by this Bench. Hence, this application has been placed for hearing before this Bench.

2. The applicant is arrested in connection with CR No.497 of 2014 registered with Dindoshi Police Station for offences under Sections 302, 323, 324, 506(2), 143, 144, 147, 148, 149, 201 of Indian Penal Code along with Section 427 of Arms Act. The applicant was arrested on 22nd October 2014.

3. The prosecution case is as follows :

(a) The first information report was lodged by Rajesh Jadhav vide CR No.497 of 2014. On 21st October 2014, the complainant noticed that his neighbours, namely Jayesh Trivedi, Hitesh Trivedi and their mother Daya Trivedi were being assaulted by Sohail Ansari, Yusuf Sajida, Imran Kazi and Shahrukh. Sohail was assaulting Hitesh by iron rod;

(b) The complainant intervened to resolve the quarrel. All the accused assaulted him. Hence, Ramesh, the cousin of complainant intervened;

(c) Sohail ran towards his house and returned with sword in his hand. He assaulted Ramesh with sword. Gullu Sajida came with gupti. He gave blow of gupti on left lap of Ramesh. Sohail assaulted Smt.Daya Trivedi on her hand. Yusuf and Imran caught hold of Ramesh and Sohail and Gullu assaulted him with intention to kill him. Shahrukh assaulted complainant by fist blow and prevented him from intervening by wooden bamboo and also threatened that even he will be killed;

4. The applicant preferred applications for bail before Sessions Court which were rejected by order dated 9th January 2015 and 15th June 2015. The applicant thereafter preferred an application for bail before this Court bearing Bail Application No.1340 of 2015. The said application was allowed to be withdrawn vide order dated 20th August 2015. The application was, however, not heard on merits.

The applicant thereafter preferred another application before this Court i.e. Bail Application No.1829 of 2015. The said application was dismissed as withdrawn vide order dated 24th January 2017. It was observed by the Court that after arguing at length, the learned counsel for the applicant, upon instructions, sought liberty to withdraw the application. Liberty as prayed for was granted in the interest of justice. Thereafter, Criminal Bail Application No.844 of 2017 was preferred, which was rejected as stated above on 19th July 2017.

5. Learned advocate for applicant submitted that the applicant is claiming parity for grant of bail. It is also submitted that although the trial was expedited by this Court vide order dated 19th July 2017, not a single witness has been examined so far by the prosecution.

6. Learned advocate for the applicant submitted that the co-accused Imran Anwar Qazi was granted bail by this Court vide order dated 26th September 2016. The applicant is similarly placed and, therefore, he is entitled for the parity. It is submitted that while adjudicating the earlier application for bail before this Court, the prosecution had contended that the application for cancellation of bail granted to the co-accused Imran Anwar Qazi is pending before the Supreme Court. It is submitted that the said application was not entertained by Supreme Court. The learned counsel submitted that the complainant had preferred an application in this Court for cancellation of bail granted to the aforesaid accused by this Court, which was rejected on 24th January 2017 on the ground that the said order was passed by co-ordinate Bench and the application is not maintainable. It is submitted that the said order as well as the order

dated 6th September 2016 granting bail to co-accused Imran Qazi was challenged before the Supreme Court by preferring Special Leave to Appeal (Cri) No.2443 of 2017 and I.A.No.6896 of 2017. The said proceedings were disposed off by the Supreme Court vide order dated 4th September 2017. It is submitted by learned advocate for the applicant that the order granting bail to accused Imran Qazi was challenged before Supreme Court and since the Supreme Court did not cancel the bail granted to the said accused, the said order continues to be in operation. It is submitted that the Supreme Court has not entertained the application for cancellation of bail of accused Imran Qazi as well as order rejecting the application filed by the complainant which was rejected on the ground that the same was not maintainable. It is submitted that in view of the above circumstances the applicant is entitled for bail on the ground of parity on account of bail order of accused Imran Qazi.

7. Learned counsel for applicant further submitted that role attributed to the co-accused Imran Qazi and the applicant is identical. The bail granted to Imran Qazi is not disturbed by the higher Court. However, the applicant continues to be in custody although the role assigned to him is identical. It is also submitted that while rejecting the earlier application, this Court has appreciated the fact that special leave petition challenging the bail granted to the accused Imran Qazi is pending before Supreme Court. Since the said application has been disposed off by not entertaining the same, the applicant is entitled for bail on the ground of parity. It is also submitted that the trial has been dragged unnecessarily. Even the application for adjournment is filed at the instance of wife of deceased. The learned counsel also pointed out the order dated 3rd

November 2017 passed by the Sessions Court wherein it is observed that the accused had requested the Court to expedite the matter, however, the widow of the deceased is seeking time on the ground that special public prosecutor is to be appointed by the Government. The Court further observed that the case is pending for a long time. The Court thereafter passed an order that the prosecution shall at least examine other witnesses if the widow of the deceased is not prepared to give evidence. The learned counsel also pointed out that vide order dated 19th July 2017, this Court had expedited the trial and directed the Trial Court to conclude the same within a span of nine months, however, there is no progress in the trial. It is submitted that the applicant cannot be kept in custody for indefinite period.

8. Learned APP opposed the grant of bail. It is submitted that this is the fourth application for bail before this Court. The earlier application was rejected on merits vide order dated 19th July 2017. Two applications were withdrawn and one was rejected by this Court. It is submitted that Imran Qazi was granted bail by this Court on the ground that person who is attributed serious role, has been granted bail by the Sessions Court. It is submitted that thereafter bail granted to Sohail was cancelled by this Court. The said order was challenged before Hon'ble Supreme Court and the petition challenging the said order has been dismissed. The said accused thereafter surrendered and also filed an application for bail before this Court which was also rejected by this Court vide order dated 19th July 2017. It is submitted that there is no change in the circumstances and the ground of parity is not applicable. The order granting bail to Sohail stands cancelled and even thereafter his

application for bail has been rejected. It is submitted that while disposing off the petition by Hon'ble Supreme Court by order dated 4th September 2017, the Supreme Court has observed that the petitioner therein had filed an application before the High Court for recall of the order granting bail to respondent no.2. The same is dismissed by the High Court by observing that such application is not maintainable. In the circumstances it would be open to the petitioner therein to file appropriate application for cancellation of bail before the High Court, which shall be considered on its own merits. With these observations, the special leave to petition was disposed off. It is submitted that the complainant has filed an application for cancellation of bail before this Court being Criminal Application No.878 of 2017 in pursuant to the order of Supreme Court which is pending.

9. Learned APP further submitted that the special public prosecutor has been appointed in the case and prosecution would take all the steps to examine the witnesses and assist the Court in concluding the trial as expeditiously as possible.

10. Perused the documents on record. The earlier application of the applicant was rejected vide order dated 19th July 2017. While rejecting the said application reasons were assigned in paragraph 7 of the order after analyzing the submissions advanced by both the parties and adjudicating upon the facts of the case. In paragraph 7 it was categorically observed that the statements of witnesses attribute the role to the applicant as a person who had caught hold the deceased and facilitated the assault. The statements of several witnesses corroborated the prosecution witness. The witnesses have

attributed a specific role to the applicant. The overt act attributed to the applicant has also been analyzed. It was also observed that the bail was granted to the co-accused Imran Qazi on the ground that the main assailant Sohail has been granted bail by the Sessions Court and role attributed to him was more serious than the present applicant. It is also observed that the order granting bail to Sohail was subsequently cancelled by this Court on merits and the petition filed by the said accused against the said order before the Supreme Court has been dismissed and the said accused was directed to surrender. Thus, the application of the applicant was declined even on the ground that the co-accused Imran Qazi was granted bail by this Court. Although a submission was advanced by learned APP at that point of time that the special leave petition challenging the order granting bail to Imran Qazi is pending before the Supreme Court, while rejecting the application for bail filed by the applicant, the Court has considered merits and also the fact that Imran Qazi was granted bail in the circumstances stated hereinabove. The submission advanced by the prosecutor that in view of the aforesaid circumstances and considering the fact that the order of cancellation of bail of Sohail has attained finality and there is no change in the circumstance or no ground for parity is available to the applicant, is well founded. The submission of the applicant that the application preferred by the complainant seeking cancellation of bail has not been entertained by Supreme Court and that the petitioner therein has been permitted to move the High Court again, cannot be considered as a change in the circumstance or ground of parity available to the applicant. The applicant had prayed for bail on the ground of parity in the earlier application which has been rejected on 19th July 2017. In the light of observations made in the earlier order,

I do not find that there is any change to consider the present application for bail.

11. As far as delay in trial is concerned, it appears the trial has not yet proceeded. It appears that steps have been taken for appointment of special public prosecutor. It also appears that the wife of the deceased had made application for adjournment of the proceedings on the ground that special public prosecutor is required to be appointed, however, presently special public prosecutor has been appointed, who has taken charge of the proceedings and it is expected that the trial would be completed expeditiously. This Court vide order dated 19th July 2017 has already expedited the trial. Both the parties are expected to co-operate in concluding the trial.

12. In the circumstances, I pass following order :

ORDER

- (i) Criminal Bail Application No.171 of 2018 is rejected;
- (ii) The Trial Court would make an endeavour as far as possible to conduct the trial on day to day basis.

(PRAKASH D. NAIK, J.)

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