

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.947 OF 2018

Zahid Husain Noor Hasan Shaikh,
Age 20 years, R/o.Room No.742, Abdul Rasul
Chawl, Near Nagina Bakery,
Gilbert Hill Road, Andheri (W),
Mumbai (Presently lodged at Arthur Road Jail) Applicant
versus
The State of Maharashtra Respondent

WITH
CRIMINAL BAIL APPLICATION NO.2506 OF 2018

Mohd. Tariq Shabbir Shaikh, Age 27 years,
R/o.608, Abdul Sasul Chawl,
Near Nagina Bakery, Gilbert Hill Road,
Andheri (W), Mumbai
(Presently lodged at Mumbai Central Prison) Applicant
versus
The State of Maharashtra Respondent

Mr.Niranjan Mundargi I/by A.N.Pathan for applicant in BA
No.947/2018.
Mr.A.M.Saraogi for applicant in BA No.2506/2018.
Mr.Arfa Sait, APP, for State.
Mr.Hanmant Lokhande, Police Inspector, D.N.Nagar Police Station,
present.
Ms.Anjali Manapalli for intervenor.

CORAM : PRAKASH D. NAIK, J.
DATE : 26th October 2018

PC :

1. These applications are filed seeking bail in connection with CR
No.327 of 2017 registered with D.N.Nagar Police Station, Mumbai.
The offences were registered under Sections 302, 307, 324, 143,
147, 149, 323, 504 of Indian Penal Code read with Sections 37(1)(A)

and 37 of Bombay Police Act. The FIR was registered on 16th May 2017. The alleged incident had occurred on 15th July 2017.

2. The applicants preferred application for bail before the Sessions Court which was rejected. The investigation is completed and charge sheet is filed.

3. The prosecution case is that the complainant is resident of Gilbert Hill Area, Andheri, Mumbai. On 15th May 2017, at about 6 pm, the complainant and his friends went for Banjo Party at New India Society, Dhangarwadi, Behind Hanuman Mandir for a pre-marriage ceremony. The place of ceremony was covered with mandap. The programme lasted since 8 pm to 12 pm. Thereafter the banjo party was over. After dinner, the complainant and his associates went for tea near Andheri Railway Station. The complainant then came back at the spot of programme. Salman, Mohammed, Shahrukh, his son Sahil and Mehboob were sitting there. Mohammed Anjum Wadari and Sadik Ali Shaikh who were known to complainant, were also present. Mohammed Wadari Asked Salman to get beer and gave him money. Thereafter Salman brought beer bottles and gave to Mohammed Wadari and Sadik Shaikh. They started drinking beer. At about 1.45 am, local social worker came on the spot and after chatting with them, she left the place of incident. At about 3.15 am one Tariq Shaikh, the neighbour of complainant, came on the spot and asked the complainant as to why lights are on at that time. There was verbal altercation between Mohammed Wadari and Tariq Shaikh. At that time Mohammed's brother Rafik also came on the spot. The other residents of the locality namely Zahid, Naim, Asif Jahangir Mujavar @ Sonu Chai and

Sonu Netla gathered at the place of incident. There was again verbal altercation between them. They came in front of Shahana General Stores. Rafik ran away from the place of incident saying that he would call people on the spot. About 10 to 15 unknown persons came on the spot. They caught Mohammed Vadari. The other person also caught the complainant and Salman. Mohammed Vadari was dragged by these people. Beer bottle of Mohammed Vadari was snatched by accused. Naeem assaulted with beer bottle on the head of to Mohammed Vadari and Sadik. Kashif brought cricket bat and assaulted Mohammed Vadari and Sadik. Sonu Netla lifted floor tile and assaulted Mohammed Vadari and Sadik. Sonu had assaulted the complainant and salman. Sonu Chai assaulted with sickle to Mohammed Vadari near his ear. Thereafter Mohammad Vadari and Sadik fell down. The applicant and other accused caught hold of complainant and another person. The others assaulted the deceased. As a result of the assault, two persons namely Mohammed Vadari and Sadik Ali Shaikh had succumbed to the injuries. Hence, the FIR was registered u/s 302 of IPC.

4. Learned counsel for applicants in both these applications submitted that no role of assault is attributed to them to the deceased persons. The applicants were allegedly present at the scene of offence. The applicant in Bail Application No.2506 of 2018 is not attributed any overt act of assaulting. Except his presence at the scene of offence and alleged to have picked up quarrel at the initial stage, there is no other overt act attributed to him. It is submitted that the applicants cannot be charged for commission of offence u/s 302 of IPC. There is nothing on record to gather common intention to liquidate the deceased persons. It is further submitted that the

incident had occurred at the spur of moment. It is not a premeditated crime. There is no evidence that the applicants had instigated any other persons to come at the place of incident armed with weapon and/or to assault the deceased persons. There are no reported criminal antecedents against applicants. The applicants in both the applications are young boys aged about 20 and 27 years respectively.

5. Learned APP vehemently opposed grant of bail. It is submitted that the sequence of events has to be taken into consideration. The cause of quarrel which has led to the incident of murder is at the instance of applicant in Bail Application No.2506 of 2018. The assault has resulted in murder of two persons. Some of the accused were armed with weapons like sickle and cricket bat. The victim was mercilessly assaulted due to which he had succumbed to death. The applicant in Bail Application No.947 of 2018 had participated in the crime by accosting one of the witness. The common intention can be gathered at the spot. All the accused had acted in connivance with each other and they decided to murder the victim. Immediately after the quarrel between the applicants in Bail Application No.2506 of 2018, all the other accused had gathered at the spot. It is further submitted that the accused were also charged for committing offence by invoking Section 149 of IPC. The common object of the accused who were present at the scene of offence including those who had participated in assaulting the deceased and those who had participated in the crime but not assaulted the deceased, were equally responsible for the murder. The crime is very serious. The accused had also assaulted other witnesses. It is therefore prayed that the applications be rejected.

6. I have perused the charge sheet. On perusal of the allegations made in the FIR it is apparent that a quarrel had taken place initially on account of putting on lights beyond mid night. It is the prosecution case that thereafter about 15 to 20 persons had gathered at the scene of offence. The victims were dragged to the place of incident. They were forced to sit on the chair. They were accosted by the accused and subsequently some of them had assaulted the deceased with sickle, floor tile and other weapons. The applicants are not assigned any role of assaulting the deceased persons. The case of prosecution is that the applicant in Bail Application No.947 of 2018 had prevented the complainant and another person from moving the place of incident. It is not the case of prosecution that the applicants had instigated others to assault. It is not the case that the applicants at any point of time called other persons who came at the scene of offence and assaulted the deceased with alleged weapons. The applicant in Bail Application No.2506 of 2018 was allegedly present when the quarrel had taken place and thereafter. He has not been attributed any role of assaulting any person. Although prosecution has invoked Section 149 of IPC, the Trial Court would look into the aspect whether it is applicable and each and every person can be attributed with the charge of murder. However, prima facie, from the evidence on record, it is apparent that the assailants who had assaulted the deceased persons were not instigated by the applicants. There is nothing to infer at this stage that all of them had a common object to kill the deceased persons. The incident had occurred at the spur of moment. It was not a pre-planned attack. The assailants had assaulted the deceased when they were dragged at the place of incident. It is also not the case of

prosecution that all of them were enemically disposed off with the deceased and there was a conspiracy or premeditation to attack them. In the absence of any evidence, prima facie at this stage, the applicants cannot be detained further in custody. The investigation is completed and charge sheet has been filed. There are no criminal antecedents against applicants. They are in custody from the date of arrest and case for grant of bail is made out.

7. Hence, I pass following order :

ORDER

- (i) The applicants in both these applications are directed to be released on bail in connection with CR No. 327 of 2017 registered with D.N.Nagar Police Station, Mumbai, on furnishing PR bond in the sum of Rs.25,000/- each with one or more sureties in the like amount;
- (ii) The applicants shall attend D.N.Nagar Police Station once in a month on every first Saturday between 10 am and 12 noon till conclusion of trial;
- (iii) The applicants shall not tamper with the evidence;
- (iv) The applicants shall attend the Trial Court for hearing of the case regularly, unless exempted by the Court for some reason;
- (v) The applicants are permitted to furnish cash security in the sum of Rs.25,000/- each for a period of four weeks

(PRAKASH D. NAIK, J.)

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