

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

CRIMINAL BAIL APPLICATION NO. 1962 OF 2018

Hussain Jinnah Shaikh

... Applicant

Vs.

State of Maharashtra

... Respondent

...

Ms. Krupali H. Rajani I/b. Mr. Jaydeep V. Thakkar, Advocate for the applicant.

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

...

CORAM : PRAKASH D. NAIK, J.

DATE : 11th OCTOBER, 2018.

P.C.

1. This is an application for bail in C.R. No.I-67 of 2018. The offences were registered with Narpoli Police Station under Sections 307, 324, 504 read with 34 of Indian Penal Code. The FIR was lodged on the complaint filed by Safiyabano Mohammed Samin Ansari on 12th February, 2018. The incident in question had arisen on 11th February, 2018. The applicant was arrested on 22nd February, 2018.

2. The prosecution case is that complainant Safiyabano Mohammed Samin Ansari is resident of Narpoli, Bhiwandi, Dist. Thane. She was pregnant. On 11th February, 2018 at about 9.30 p.m. the complainant, her husband and two daughters had

dinner. Her husband left for his night shift duty. At about 9.45 p.m. the complainant had stepped out of the house. Hussain from the vicinity and his friend Ganya appeared in front of her. Hussain was holding an iron pipe in his hand. Hussain gave blow by iron pipe on stomach. She collapsed at the spot. Mother of the complainant brought her to hospital for treatment. Subsequently, it was learnt that other persons namely Alfrida Abdul Siddiqui and Mohammed Khalil Shaikh were also assaulted by Hussain and his friend by iron pipe.

3. In pursuant to registration of FIR, statements of witnesses were recorded. Supplementary statement of complainant was recorded on 21st February, 2018. In the said statement, she stated that the accused Hussain had also assaulted Alfrida Abdul Siddique and Mohammed Khalil Shaikh. While Hussain was assaulting the complainant, Ganya, Irfan Patel and Shahid Khan were instigating him to assault the complainant.

4. The applicant preferred an application for bail before the Court of Sessions which was rejected vide order dated 23rd July, 2018.

5. Learned advocate for the applicant submitted that the applicant has been falsely implicated in this case. The applicant is

in custody from the date of arrest. Investigation is completed and chargesheet has been filed. Further detention of the applicant is not necessary. There is no intention or motive to assault the victim. Weapon used in the crime is not deadly weapon. The offence under Section 307 of Indian Penal Code is not attracted. There is nothing on record to show that it was premeditated crime and therefore the applicant was not sharing an intention to commit murder. The victim was hospitalized for two days. There is no grievous injury on the body of the complainant. The statements relied upon by the prosecution are of interested witnesses. There are contradictions in the statements of witnesses. There is variation in the statement recorded under Section 161 and 164 of Code of Criminal Procedure. There was no intention to commit murder. The statement of injured Khalil Shaikh recorded under Section 164 of Code of Criminal Procedure does not attribute specific overt act to applicant.

6. Learned APP submitted that there is sufficient evidence against the applicant showing his involvement in the crime. Applicant is named in the First Information Report. He has been attributed specific overt act. The applicant had assaulted the complainant. She was pregnant. She was assaulted by giving blow

of iron pipe on her abdomen. The applicant had also assaulted another witness who had sustained grievous injury. He was instrumental in assaulting three persons. The conduct of the applicant in mercilessly attacking the victim shows his mentality in committing crime. The injury certificate reflects the nature of injuries sustained by the witnesses. There is recovery of iron pipe from the applicant. There are eye witnesses to the incident. Hence, it is prayed that the application be rejected.

7. I have gone through the evidence on record. The FIR was lodged on 12th February, 2018. the complainant has categorically stated that the applicant had assaulted her by iron pipe by giving blow on her stomach. She was pregnant at the time of incident. On 15th February, 2018, the weapon used in commission of the crime was recovered at the instance of the applicant. Injured Mohd. Khalil Shaikh had sustained CLW on the front parietal region which is 8 cm x 1 cm x bone deep vertical and grievous in nature. The complainant had also sustained contusion over abdomen with hard and blunt object. Similarly, Alfrida Abdul Siddiqui had sustained two injuries in the nature of contusion and blunt trauma. Thus, the medical evidence supports the version of the witnesses. The statement of witnesses were recorded under

section 164 of Code of Criminal Procedure the specific overt act has been attributed to the applicant. All the eye witnesses have attributed role to the applicant. In the statement under Section 164 of Code of Criminal Procedure, the complainant had stated that the accused was under the influence of drug and he assaulted her by iron pipe. Mohd. Farooq Mohd. Khalil Shaikh has also stated that applicant and his associates were under influence of drugs. Applicant assaulted his father Mohd. Khalil Shaikh. Applicant assaulted by iron pipe on head of Mohd Khalil Shaikh. Witness Alfrida had stated that she was assaulted by applicant by iron pipe. There are minor variations in the statements of witnesses in recorded under Sections 161 and 164 of Code of Criminal Procedure. However, there is consistent evidence of assault against the applicant. According to prosecution the applicant has assaulted all the injured persons the series of incident of assault committed on the same day. There are several eye witnesses to the incident. Medical case papers issued by J.J. Group of Hospital refers to the nature of injury sustained by Mohd. Khalil Shaikh. It is apparent that injuries are of serious in nature multiple hemorrhagic contusion with significant perilesional edema are noted in left frontal, left high parietal region and right

frontal region with largest measuring 2.1 x 1.4 x 1 c.m. in left parietal region. The certificate also refers to extraxial biconvex hyperdense collection of blood attenuation with maximum cranio-cerebral thickness of 1 cm is noted in left frontal region with few suggestive of extradural hemmorrhage. Taking into consideration aforesaid facts, it is apparent that there is strong evidence against the applicant and case for grant of bail is not made out. Hence, I pass the following order.

ORDER

- i. Bail Application No. 1962 of 2018 is rejected.
- ii. In the event trial does not commence within a period of six months from today, the applicant will be at liberty to prefer fresh application.

(PRAKASH D. NAIK, J.)

Sachidanand
Kuttan Nair

Digitally signed
by
Sachidanand
Kuttan Nair