

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

BAIL APPLICATION NO. 2486 OF 2018

Kamar @ Akkya Moinuddin ShaikhApplicant
V/s.

The State of MaharashtraRespondent

Mr. V.B. Shivarkar for the applicant.

Mrs. J.S. Lohokare, APP for the State.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED: 30th OCTOBER, 2018.

P.C.:

. This is the second bail application filed by the aforesaid applicant who is facing trial in Sessions Case No.610/2015 pending on the file of learned Additional Sessions Judge, Pune. The said case arises from C.R.No.110/2015 registered at Wanwadi Police Station, Pune for offences punishable under sections 143, 147, 302 r/w. 149 of the Indian Penal Code.

2. Heard Mr. V.B. Shivarkar, learned counsel for the applicant and Mrs. J.S. Lohokare, learned APP for the State.

3. The previous bail application filed by the aforesaid applicant was rejected by this Court by order dated 10/08/2017 in Criminal Bail Application No.911/2017. Mr. V.B. Shivarkar, learned counsel for the

applicant submits that subsequent to the said order, some of the co-accused having similar role have been granted bail. He submits that the applicant is, therefore, entitled for bail on the ground of parity. He further submits that the statement of the wife of the deceased indicates that she had not identified the applicant. He, therefore, claims that the applicant has been wrongly arrayed as an accused.

4. Mrs. J.S. Lohokare, learned APP submits that the role attributed to the present applicant was not similar to the co-accused who have been released on bail. She, therefore, claims that the applicant is not entitled for bail on the ground of parity. She further submits that the statement of the wife was already on record when the previous bail application was rejected on merits. She contends that there is no change in circumstance and hence, the applicant is not entitled for bail.

5. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

6. One Mohammad Salim Saidu Rahman Mujumdar had lodged the first information report dated 27/04/2015 stating that the applicant Akhya @ Kamar was involved in eve teasing the daughter of the deceased Akbar Bhaiya. The deceased and the first informant had

questioned the applicant Akkya about the said incident. The exchange of hot words led to a scuffle between Akbar Bhaiya and the deceased over the said issue and in the course whereof, Akbar Bhaiya slapped the applicant Akkya. It is alleged that the applicant and other co-accused had threatened Akbar Bhaiya of dire consequence.

7. Harboursing enmity due to the previous incident, on 26/04/2018, at about 08:00 p.m., while the deceased Akbar Bhaiya was at the construction site, the applicant Akkya alongwith other co-accused assaulted him by kicks and fist blows. It is also stated that the co-accused Yogesh also picked up a stone and threw the same on the head of Akbar Bhaiya. Said Akbar Bhaiya was taken to the hospital and he was declared dead. The post mortem report reveals that said Akbar had expired as a result of the head injury.

8. Mr. V.B. Shivarkar, learned counsel for the applicant has relied upon the order dated 18/06/2018 whereby this Court had granted bail to the co-accused Sadanand Bhaskar Shinde. He, therefore, contends that the applicant is entitled for bail on the ground of parity.

9. It may be mentioned that in the order dated 18/06/2018, this

Court while granting bail to the co-accused had observed that the said co-accused was not armed with any weapon, he was not the person who had initiated the quarrel or mounted assault.

10. The role attributed to said Sadanand Shinde is not similar to the role attributed to the present applicant. Though the applicant was not involved in inflicting the fatal injury, the records prima facie reveals that the applicant was involved in eve teasing the daughter of the deceased. In the quarrel that ensued over the said incident, the applicant had threatened the deceased with dire consequence. This was the motive to assault and kill the deceased Akbar Bhaiya. It is also pertinent to note that a perusal of the order dated 10/08/2017 reveals that even in the previous bail application, being Criminal Bail Application No.911/2017, the applicant had sought bail on the ground of parity. This Court, while rejecting the ground of parity had observed that the applicant was one of the main accused. This applicant, therefore, does not stand on the same footing and hence, is not entitled for bail on the principles of parity.

11. Now coming to the second limb of arguments, the learned counsel for the applicant justifies release of the applicant on bail on the

ground that the wife of the deceased had not identified the applicant. It is to be noted that when the previous bail application was rejected, the statement of the wife of the deceased was already recorded. The fact that the applicant had not specifically raised the said ground cannot be considered as a change in the circumstance. It need not be emphasized that when the Court decides the application on merits after considering the records and hearing the parties, it is deemed to have gone through all the aspects of the case. Hence, the applicant cannot seek bail on the very grounds which were available when the first bail application was filed and rejected, as by implication, the said grounds are deemed to have been considered.

12. Considering the fact that the earlier bail application was dismissed on merits and that the applicant has not been able to point out any change in the circumstances, the subsequent application is not maintainable. Hence, the Bail Application is dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)