

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****BAIL APPLICATION NO. 2498 OF 2017**

Jamir Salim Shaikh. ... Applicant.

Versus

The State of Maharashtra. ... Respondent.

Mr. Manoj Mohan Gadkari, advocate for Applicant.

Mr. Umesh Mankapure, advocate for original complainant.

Mrs. P.P. Shinde, APP for State.

CORAM : SMT.SADHANA S. JADHAV,J

DATE : JANUARY 19, 2018

P.C.:

1 Heard the learned Counsel for the applicant, learned Counsel for the complainant and the learned APP for State.

2 This is an application under section 439 of the Code of Criminal Procedure, 1973. The applicant herein is arrested on 8/4/2017 in Crime No. 26/2017 registered at Mahatma Gandhi Chowk Police

Station, Miraj. Investigation is completed and charge-sheet is filed against the applicant alongwith others for offence punishable under section 307, 302, 326, 324, 323, 143, 147, 148, 149, 504 of Indian Penal Code and section 37(1)(3)/135 of Bombay Police Act.

3 It is the case of the prosecution that on 7/4/2017 Juber Ibrahim Chaudhari lodged a report at the police station. That on 7/4/2017 at about 8.30 p.m. he alongwith his brother Arif and father Ibrahim had been to Idgah Nagar for celebrating birthday of Hussain Kunnure. After the celebration, Ibrahim was talking to Raju Patel. Naushad was attempting to be inquisitive. Hence, he was asked by Ibrahim Choudhary to keep some distance. Naushad was annoyed with the same and had abused Ibrahim and Arif Choudhary. At about 9 p.m. when they were returning and passing through Idgah chowk, they saw Naushad, Samir, Khwaja, Jamir i.e. present applicant and Amir were standing on the road and started abusing the complainant and his father. The moment the complainant tried to retaliate, Naushad abused his father, rushed towards him and at that relevant time,

Khwaja Shaikh had caught hold of Arif. Samir had then assaulted Arif with a rod on his head and soon thereafter Sameer had assaulted Ibrahim with the rod. After the assault Naushad, Amir and Jamir had allegedly assaulted them with fists and kick blows. Soon thereafter people had gathered and the injured were admitted in the hospital. On the basis of the said report Crime No. 26/2017 was registered against the applicant and others and they were arrested on the very next day.

4 Perused the injury certificate and the post mortem notes. The injury certificate of Ibrahim would show that he had sustained one contused lacerated wound on right frontal parietal region which was described as grievous injury. It appears from the injury certificate that the history given to the doctor of Wanless Hospital, Miraj at the time of examination was as follows : **“alleged accidental assault injury with severe head injuries with haemorrhagic shock”**. The injury certificate dated 19/4/2017 issued by Western India Institute of Neurosciences (WIINS) is as follows : “Mr. Arif Choudhari, was

admitted at hospital on 8/4/2017 with history of assault beaten by iron rod, as per history provided by patient and relative. He had sustained CLW over forehead approximately 4 x 2 x 1 cm. It can be caused by hard and blunt object like iron rod used with force”.

5 It is a matter of record that Ibrahim and Arif were corporators. The papers of investigation would show that the certificate issued by Western India Institute of Neurosciences for Mr. Ibrahim Choudhari shows that “he had Right Frontal Hemorrhagic Contusion with **masses effect underneath this CLW for which he was operated on emergency basis. He died on 10/4/2017 at 10 a.m. as a result of above injury**”.

6 It is a matter of record that Ibrahim was unconscious from the time he was admitted. The medical case papers would further show that “Poor and guarded prognosis was explained. Following admission patient was treated conservatively with decongestion,

antibiotics and antiepileptic and he was immediately taken up for emergency surgery with due risk.”

7 The learned Counsel for the applicant submits that medical intervention is the cause for the death of Ibrahim. The learned Counsel for the applicant submits that the first informant was an eye witness to the incident and according to him the applicant had assaulted with fists and kick blows after Ibrahim was assaulted with iron rod. Moreover, there is a reference to 3 person from which it can be inferred that it was Khwaja, Naushad and Sameer who were waiting for the complainant and his father.

8 Learned Counsel for the applicant has drawn attention of this court to the station diary dated 7/4/2017 at Sr. No. 49 which was recorded at 11.30 p.m. wherein it was disclosed that Ibrahim and Arif Chaudhary were admitted in the hospital in an injured condition. The history narrated was that there was some quarrel in the house over some transaction and in the said altercation they had sustained

injuries due to which their friends Rafique Mujawar and Abid Jamadar had admitted them in the hospital at 9.20 p.m. It also shows that the relatives had informed the doctors that the injured would be taken to the hospital of Dr. Prabhu at Kolhapur and the said information was given to senior police officer immediately. It is submitted that the entry at Sr. No. 52 would show the narration as per the FIR. Therefore, according to the learned Counsel for the applicant, the witnesses have suppressed the very genesis of the incident and hence, it is doubtful as to whether the incident has occurred as per the narration in the FIR.

9 The learned Counsel for the original complainant vehemently submits that in fact, there are several eye witnesses, who had disclosed to the police that in fact, the applicant had caught hold of Ibrahim and thereafter, he had facilitated Sameer to assault Ibrahim and Arif. The learned Counsel for the original complainant has further submitted that the discrepancy in the role attributed to the applicant in the FIR could be because the complainant happens to be

the son of deceased Ibrahim and the brother of injured Arif and on the spur of the moment he must have attributed the roles.

10 On perusal of the FIR, it appears that according to the proforma the incident had occurred at about 9 p.m. and the offence was registered at about 11.30 p.m. and entry No. 49 is at 11.30 p.m.

11 The learned Counsel for the applicant vehemently submits that the station diary entry at 11.30 p.m. cannot be ignored at this stage and the applicant should not be subjected to punitive detention. It is also submitted that the said station diary entry is material which can be converted into the substantive evidence. Upon perusal of the post mortem notes also it is clear that the deceased Ibrahim had sustained one injury which was surgically sutured. The learned Counsel has further submitted that in fact, eye witnesses had also attributed specific role to Dastagir Abbas Nishandar and Amir Khwaja Shaikh. They have been granted bail by the Sessions Court. The learned Counsel Mankapure submits that the applicant cannot be enlarged on

bail by virtue of doctrine of parity, since the complainant has filed an application seeking cancellation of bail granted in favour of two accused. The statement of Raju Patil recorded on 8/4/2017 would show that it was Khwaja Shaikh and Dastagir Nishandar who had caught hold of Arif Chaudhary and Ibrahim Chaudhary was caught hold by Naushad and Jamir. It also shows that one Iqbal Chaudhary was also injured in the said incident. However, papers of investigation do not show that Iqbal Chaudhary had sustained any injury and therefore, there is no injury certificate to that effect.

12 According to the learned Counsel for the applicant, the incident was blown out of proportion and therefore, the applicant deserves to be enlarged on bail.

13 Taking into consideration the medical case history, the statement of the witnesses, station diary entry at Sr. No. 49 recorded at 11.30 p.m. and the submissions advanced across the bar, this Court is of the opinion that the applicant deserves to be enlarged on bail.

14 However, it is made clear that co-accused shall not claim parity with the present applicant, more particularly, Naushad Shaikh, Khwaja Shaikh and Sameer Shaikh.

15 It is made clear that the above observations are restricted to the application under section 439 of the Code of Criminal Procedure, 1973 and shall not be taken into consideration at the time of trial.

16 Hence, following order is passed :

ORDER

(i) The application is allowed.

(ii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 50,000/- and one or more solvent sureties in the like amount.

(iii) The applicant shall not reside in Miraj town till the framing of charge.

(iv) The applicant shall not tamper with the evidence.

17 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)