

Anand

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

BAIL APPLICATION NO. 2621 OF 2017

Shahbaz Farukh Ansari

.Applicant

Vs.

The State of Maharashtra

.Respondent

Mr. A. Yende, Advocate, for the Applicant

Mrs. A. A. Takalkar, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 26.03.2018

P.C.

. Heard learned counsel for the parties.

2. By this Application, the Applicant seeks his enlargement on bail in connection with C. R. No. I-141 of 2017 registered with the Ulhasnagar Police Station, for the alleged offence punishable under Sections 302, 342 r/w 34 of the Indian Penal Code.

3. Learned counsel for the Applicant submits that the Applicant aged 19 years has been falsely implicated in the said case. He submits that the incident has taken place in two parts and that the Applicant was not concerned with the second part i. e. the incident

which took place on 02.06.2016 at 10.30 p. m.. He submits that the Applicant has no antecedents and that investigation is complete and charge-sheet is filed.

4. Learned APP opposed the Application. She submits that the 164 statement of Ajay Sonar, an eye witness to the incident shows the complicity of the Applicant i. e. that the Applicant was involved in both the incidents i. e. the incident which took place at 7.00 p. m. and at 10.30 p. m.

5. Perused the charge-sheet. The incident took place on 03.06.2017. It is alleged by the prosecution, that co-accused Javed had lost his mobile and that he suspected that Mohammed Adil Ansari (deceased) had stolen the same. It is alleged by the prosecution that on 03.06.2017, Mohammed Adil Ansari was assaulted by the Applicant and others with weapons on his thighs, waist, legs (under the waist). It appears from the statement of Ajay Sonar recorded under Section 161 of Cr.P.C., that when he asked them not to assault Mohammed, the accused asked him not to interfere. Ajay Sonar has in his statement further stated that in view of the same, he left the spot and returned after some i. e. after 20 minutes, where he saw Javed, Shamim and the Applicant doing

work. He also saw that Mohmammed Adil Ansari's hands were tied and he was weeping. He has stated that thereafter, he left the spot and returned back at 10.30 p. m.. He has further stated that Javed, Shamim and Rizwan again assaulted the deceased and that thereafter, they all left the spot. He has further stated that at 11.30 p. m. when he returned, Rizwan checked Mohammed and found that he was not breathing. At that time, Javed, Shamim and Rizwan were present. In the said 161 statement, Ajay Sonar has disclosed the Applicant's presence at 7.00 p. m. and not subsequently. It appears that however, in the 164 statement which was recorded on the very next day, Ajay Sonar has stated that the Applicant was also present in the second incident i. e. at 10.30 p. m. and that he too assaulted Mohammed. There is discrepancy in the 161 and 164 statements of Ajay Sonar, who is the only eye witness to the incident, with respect to the Applicant's presence at 10.30 p. m.. Admittedly, the Applicant had no motive to assault the deceased. The Applicant is aged 19 years. Investigation is complete and charge-sheet is filed.

6. Considering the aforesaid, the Application is allowed and the Applicant is enlarged on bail on the following terms & conditions :-

ORDER

- (i) The Applicant be enlarged on bail, on executing PR Bond in the sum of **Rs. 20,000/-** with one or two sureties in the like amount;
- (ii) The Applicant shall report to the investigating officer of the concerned police station on the **first Sunday of every month** between 10:00 a. m. and 11:00 a. m. till the conclusion of the trial;
- (iii) The Applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;
- (iv) The Applicant to cooperate with the conduct of the trial;
- (v) If there are two consecutive defaults in appearing before the trial Court, the prosecution will be at liberty to apply for cancellation of the Applicant's bail;
- (vi) The Applicant shall file an undertaking with regard to clauses (ii) to (v), in the trial Court, within two weeks of his release;
- (vii) If there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

7. The Application is allowed in the aforesaid terms and is accordingly disposed of.

All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)