

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

CRIMINAL BAIL APPLICATION NO. 2920 OF 2017

Tabrej @ Tabbu Darvesh Khan & Anr. ... Applicants.

V/s.

The State of Maharashtra ... Respondent.

Mr. Sudeep Pasbola, Advocate a/w. Bhavesh Thakur & Karl
Rustomkhan I/by Rahul Arote for the Applicants.

Mr. Y. Y. Dabke, APP for the Respondent - State.

CORAM : PRAKASH D. NAIK, J.

DATE : OCTOBER 09, 2018.

PC :

1 This is an application for grant of bail to the applicants in connection with C.R. No. 182 of 2017 registered with Powai Police Station for offences punishable under sections 302, 397, 398, 201, 427 120 (B) r/w. 34 of the Indian Penal Code.

2 The applicants were arrested on 18.04.2017 and investigation is complete and chargesheet is filed. The incident allegedly occurred on 17.04.2017 and the first information report was lodged on 18.04.2017.

3 The prosecution case is that complainant - Gulab Shaikh is employed with Moon Security and deputed as “Security Guard” at Powai. He was vested with duty of obstructing any person trying to catch fishes by putting Mesh in the Powai Lake during night. Other persons, namely, Shoaib Khan, Jaffer Hussain Shaikh and Mehboob Khwajamiya Patel @ Baba were also deputed along with the complainant on duty. On 17.04.2017, the complainant and supervisor - Shoaib Khan were on duty. Jaffer and Shoaib Khan boarded one Boat and the complainant alongwith one Dharmendra boarded another Boat and went towards the Jetty. They returned alongwith Tabrej @ Tabbu Darvez Khan (Applicant No.1) and Salim Akhtar H. Siddiqui (Applicant No.2). The complainant had seen the said persons laying Mesh for catching fishes on several occasions. Tabrej threatened Shoaib that he should be allowed to lay the Mesh to catch fishes, else he would be killed. Thereafter, the complainant and others boarded the boat and went inside water. The boat was driven by Jaffer and there was quarrel between Tabrej and Shoaib. It is alleged that Tabrej threatened Shoaib with knife and took cell phones from him and others. Tabrej (applicant no.1) assaulted Shoaib by knife on his hands and chest. Salim Siddiqui (applicant no.2) was instigating Tabrej to kill Shoaib. Tabrej assaulted on neck of Shoaib and handed over the knife to Salim, who also assaulted Shoaib with knife. Subsequently, both accused pushed Shoaib inside the water and made him

drown. Other inmates were also threatened by the applicants - accused. Thereafter, the accused went to Amrut Bar, stating that they would sit under CCTV so that there will be no allegation against them. The complaint was lodged on 18.04.2017 for the aforesaid offences, on the statement of Gulab Shaikh.

4 Learned counsel for the Applicants submitted that although the reading of first information report gives an impression that the applicants have committed said crime, the circumstances show that they have been falsely implicated in the crime. It is submitted that the victim was allegedly alive at the time of the incident and was pushed into water and subsequently, on being searched, he was taken out of water. He submitted that the diatomic test conducted by the investigating machinery is negative. No water was found in the body of the deceased. Statements of the persons from the Amrut Bar were not recorded by the investigating officer. In one of the CCTV footage, the presence of the applicants is not recorded.

5 Learned APP submitted that there is strong evidence against the applicants. The complainant is eye witness. He has clearly attributed the role of assault to the applicants. Both the applicants had assaulted the deceased with knife. The deceased was pushed into water. He further

submitted that there are two other eye witnesses to the incident. The evidence on record clearly establishes the presence of the applicants at the scene of the offence and commission of crime. CCTV footage also supports the prosecution case. There is recovery of knife at the instance of the accused. There are antecedents against the applicants.

6 The applicants had preferred application for bail before the Sessions Court, which was rejected. There is direct evidence on record about involvement of the applicants in the commission of the crime. The complainant had attributed specific overtact to the applicants. Two other eye witnesses namely Dharmendra and Jaffar Shaikh have also specified the role played by the applicants in the said crime. Thus there is sufficient evidence to show involvement of the applicants. There are antecedents and recovery of knife from the applicants accused. The submissions advanced by the learned counsel for the applicants can be agitated during trial and in view of direct evidence against the applicants in the nature of the eye witnesses, who had specifically stated that the applicants have assaulted the deceased by giving blows of knife on vital part of body of the deceased. No case of grant of bail is made out. Hence, bail application is rejected.

(PRAKASH D. NAIK, J.)

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