

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

**CRIMINAL APPEAL NO. 1275 OF 2019**

Sameer @ Islam Mujibar Shaikh

...Appellant

**Versus**

The State of Maharashtra and Ors.

...Respondents

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Mr. Aamir M. Shaikh for the Appellant.

Mr. V.B. Konde-Deshmukh, APP for Respondent – State.

Mr. Vikas K. Singh appointed for Respondent No. 2.

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**CORAM : S. S. SHINDE &  
N. B. SURYAWANSHI, JJ.**

**DATE : 10<sup>th</sup> OCTOBER 2019**

**PER COURT :**

1. This appeal is filed taking exception to the impugned order dated 15.03.2017 passed by learned Additional Session Judge – 1, Thane in Criminal Misc. (Bail) Application no. Exh – 16 of 2017 in S.C. No. 391 of 2016.

2. Learned counsel appearing for the appellant submits that, there is no specific role attributed to the appellant. He further submits that, name of the appellant is not disclosed in the first information report and the appellant has no role in the commission of the alleged offences. Learned counsel

appearing for the appellant submits that, another co-accused filed Criminal Appeal No. 807 of 2017 (Imad Bashir Thakur Vs. The State of Maharashtra) before this Court, and his appeal has been allowed thereby releasing him on bail. It is further submitted that, investigation is over and charge-sheet is already filed and the appellant is in jail since 19<sup>th</sup> July 2016. It is submitted that, the appellant has no any criminal antecedents. Therefore, learned counsel appearing for the appellant submits that Appeal may be allowed.

3. On the other hand, learned APP appearing for the Respondent – State invites attention of this Court to the allegations in the FIR so also the charge-sheet and its accompaniments and submits that, the present appellant was identified in the identification parade by the witness. He further submits that, appellant is rickshaw driver and other co-accused traveled in the said auto rickshaw and thereby the present appellant has facilitated the co-accused for the commission of the alleged offence. Therefore, learned APP appearing for the Respondent – State prays that appeal may be dismissed.

4. Learned counsel appearing for the Respondent No. 2 adopted the arguments advanced by the learned APP and submits that, Appeal may be dismissed.

5. Heard learned counsel appearing for the Appellant and learned APP appearing for the Respondent – State. With their able assistance perused the grounds taken in the Appeal, allegations in the FIR, charge-sheet and its accompaniment. Admittedly, Imad Bashir Thakur, who is co-accused in the FIR bearing C.R. No. I-267 of 2016 registered with Nerul Police Station for the offences punishable under Sections 302, 364, 323, 143, 147, 149, 504 and 506 of the Indian Penal Code, 1860 and Sections 3(1)(r)(s), 3(2)(v)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is released on bail by this Court (CORAM : RANJIT MORE and DR. SHALINI PHANSALKAR – JOSHI, JJ.) by order dated 21<sup>st</sup> November 2017 allowing Criminal Appeal No. 807 of 2017 filed by the appellant. It would be apt to reproduce herein below paragraph no. 4 of the order passed in Criminal Appeal No. 807 of 2017 which reads as under:

4. The said FIR is registered at the instance of one Shahaji Sopan Sonawane, the father of deceased Swapnil. The prosecution case discloses that on 18<sup>th</sup> July 2016, deceased Swapnil informed his father that around 8.30 p.m., 4 to 5 persons had taken him to Police Station after beating him, where his statement was recorded and thereafter he was allowed to go. The original complainant thereafter approached the Police Station on 19<sup>th</sup> July 2016. However, his complaint was not recorded by the police. It is further alleged in the FIR that while in Police Station at about 7.30 p.m., the

Complainant received phone call from his daughter that around 15 to 20 persons were trying to break open the door of their house. On this call, the Complainant immediately rushed to his house. There, he found that accused Sagar Naik, Durgesh and other 15 to 20 persons had gathered near his house. It is alleged that these accused took his wife and deceased son – Swapnil on the terrace and assaulted the Complainant and deceased – Swapnil. They also gave abuses in the name of caste. When accused left the scene of offence, Swapnil was taken to the hospital where he succumbed to the said injuries. After completion of investigation into the subject FIR, the charge-sheet is already filed in the concern Sessions Court. Copy of the charge is annexed to the petition. We have gone through the FIR and statements of eye-witnesses including that of the Complainant and one Vishal Rane. In both the statements, name of the present Appellant is not disclosed. According to the prosecution in the identification parade, the Complainant and said Vishal Rane have identified the present Appellant as the person accompanying Sagar Naik. However, no specific role is attributed to the present Appellant. We have also perused the post-mortem report of the deceased – Swapnil. The report disclosed that the cause of his death is head injury, which prima facie in our opinion cannot be attributed to the present Appellant. The Appellant is in custody since 22<sup>nd</sup> July 2016. The investigation is over and charge-sheet is also filed. Taking totality of the facts and circumstances of the case into

consideration, we do not find any impediment to grant bail to the present Appellant in the subject crime.

Accordingly, the appellant there in was directed to be released on bail.

6. The role attributed to the present appellant is also similar to that of appellant in the aforesaid appeal. Apart from it, as rightly submitted by the counsel appearing for the appellant that charge-sheet is already filed and the appellant is languishing in jail since July, 2016, therefore, the appellant deserved to be released on the ground of parity.

7. In that view of the matter relying upon the reasons assigned by the Division Bench (CORAM : RANJIT MORE and DR. SHALINI PHANSALKAR – JOSHI, JJ.) of this Court, in the order dated 21<sup>st</sup> November 2017 and in particular paragraph no. 4 thereof, appeal deserves to be allowed. Accordingly, the appeal is allowed and disposed of by passing following order:

**ORDER**

- i) The Appellant is directed to be released on bail on his furnishing PR bond of Rs. 20,000/- to the satisfaction of the Trial Court on the conditions that:
- ii) He shall not hamper or tamper with the prosecution evidence

and

- iii) He shall attend the Nerul Police Station as and when required.
- iv) This Court appreciates the sincere efforts taken by the learned counsel Mr. Vikas K. Singh in arguing the matter on behalf of Respondent No. 2 who was appointed by the High Court Legal Services Committee, Bombay, therefore, High Court Legal Services Committee, Bombay is directed to pay Rs. 5,000/- (Rupees Five Thousand Only) as professional fees and expenses incurred, to the learned counsel Mr. Vikas K. Singh, within a period of one month from today after completion of procedural formalities.

(N. B. SURYAWANSHI, J.)

(S. S. SHINDE, J.)