

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

BAIL APPLICATION NO. 997 OF 2019

Arshad Abdul Hassan Khan .Applicant

Vs.

The State of Maharashtra .Respondent

Mr. Sudeep Pasbola a/w Mr. Karl Rustomkhan i/b. Mr. Rahul Arote,
Advocate, for the Applicant

Mr. S. V. Gavand, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 13.08.2019

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-65 of 2018 registered with the Chitalsar Police Station, Thane(W), for the alleged offences punishable under Sections 364, 302, 201 r/w 34 of the Indian Penal Code.

3. Perused the papers. According to the Complainant – Shakti Hiranman Dhongade,(a chance witness), after completing his duty on 25.03.2018 at 2.30 p. m. he saw a Rickshaw in which there were five persons. According to the Complainant, the said five persons got down from the Rickshaw and that out of the said five persons, four persons

pulled one person and took him to a place where there were bushes. He has stated that the said person was assaulted with fist and kick blows and that although the boy (deceased) was pleading not to hit him, the said four persons were saying that he would not be spared today, but would be killed. He has further stated that one of the persons assaulted him with the bottle and two persons held him and one of the accused persons assaulted him with a sharp edged weapon on his head, neck and hands. According to the Complainant, after the said person fell down, all the accused fled from the spot. It later transpired that the boy, who was assaulted was Wasim Rashid Fakir Khan. According to the learned counsel for the Applicant, the motive for assaulting Wasim Khan was that he was having an affair with one of the accused' sister. The statement of Chandni Rajnath Yadav, sister of one of the accused clearly spells out the motive. The said witness has also stated that how on 25.03.2018, when she met Wasim Khan (deceased) near Viviana Mall, her brother – co-accused Gopal and the present Applicant came there and that her brother held Wasim's collar and the Applicant started assaulting him. It appears that thereafter, the deceased was abducted by the Applicant and other co-accused and thereafter, was assaulted. The Post Mortem Report of the deceased reads as under :-

“Death due to hemorrhagic shock following stab injury to neck and other multiple injuries (un-natural). Samples preserved for accessory examination.”

It appears that in the first test identification parade which was held on 21.05.2018, the Complainant could not identify any of the accused, as he was extremely scared. The same is recorded in his statement dated 21.05.2018. He has stated that he could not identify any of the accused, as he was scared, however, if he is again shown the accused, he will identify them. Thereafter, the second test identification parade was held on 18.08.2018, in which the Complainant identified the Applicant, as being one of the assailants.

4. Considering the role of the Applicant and the manner in which the deceased was abducted and assaulted brutally, this is not a fit case to enlarge the Applicant on bail. The possibility of the Applicant tampering with the witnesses also cannot be ruled out. Hence, the Application stands rejected. However, the trial of the Applicant is expedited.

5. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

(REVATI MOHITE DERE, J.)