

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Criminal Bail Application No. 1551 OF 2019

Iqbal Abdul Kadir Shaha

...Applicant

Versus

The State Of Maharashtra

...Respondent

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Mr. A.P. Mundargi, Senior Advocate a/w. Ganesh Bhujbal i/b. Prashant
H. Gawane, Advocate for the Applicant.

Mr. S.H. Yadav, APP, for the Respondent – State.

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CORAM : SARANG V. KOTWAL, J.

DATE : 15th OCTOBER, 2019

PC.

1. The applicant is seeking his release on bail in connection with C.R. No.I-291/2018 registered with Panvel City Police Station under Sections 302, 324, 323, 504, 506 read with Sections 34 and 120B of I.P.C.

2. The FIR is registered on the statement given by the deceased Shakeel Salim Shaikh himself after he had suffered injuries. The statement was recorded on 1.7.2018. He stated in his FIR that on 30.6.2018 at about 10:00 p.m., he had some altercations with one Avi alias Ajinkya Shinde in respect of payment of fare of rickshaw. Avi was boasting of his association

with one Rajesh Kaikadiya. At 10:35 p.m., Avi Shinde came back again and took up fight with the deceased. He was accompanied by one Babu Kaikadi and two others. Avi Shinde assaulted the deceased with iron rod on his head. Babu Kaikadi assaulted the deceased with knife on his abdomen, forehead and cheek. The mother and wife of the deceased came there. They tried to intervene. The victim's mother was assaulted by Babu Kaikadi. Thereafter they all went away and the victim Shakil Shaikh was removed to the hospital. On this basis, the FIR is lodged.

3. The victim survived for few more days and succumbed to his injuries on 7.7.2018. The postmortem notes show that he had suffered six injuries as mentioned by the victim himself. The cause of death was mentioned as 'death due to cardio respiratory failure due to septicemia following hemorrhagic following stab injury to left side of chest and abdomen'.

4. The investigation was carried out. The applicant was arrested on 7.7.2018 and since then he is in custody. The investigation is over and the charge-sheet is already filed.

5. I have heard Shri A.P. Mundargi, learned Senior Counsel

for the applicant and Shri S.H. Yadav, learned A.P.P. for the State.

6. Shri Mundargi submitted that the victim himself has not even named the applicant. In the charge-sheet there are statements of other witnesses who have mentioned that the applicant and the deceased were friends and had even shared drinking session in that evening itself. Therefore, it was impossible that the victim would not have mentioned the applicant's name if he really was one of the assailants. He submitted that in any case the statements of other eye witnesses at the highest show that the applicant had only pushed other ladies of the family and no role or weapon is attributed to him.

7. Shri Yadav on the other hand submitted that the statement of mother of the deceased shows that the applicant had also taken part in the assault. He, therefore, opposed grant of bail to this applicant.

8. I have considered all these submissions. There are no other incriminating circumstances against the applicant in the form of recovery etc. The evidence consists of statements of the eye witnesses. Most important witness, of course, is the injured

himself who has not named him at all. The other set of eye witnesses is consisting of victim's mother Sherbano, his sister-in-law Ayesha Shaikh and his wife Naziya. Their statements are also recorded under Section 164 of Cr.P.C. Their statements under Sections 161 and 164 of Cr.P.C. are consistent. Sherbano, mother of the deceased, had stated that at around 11:00 p.m., she, her daughters-in-law Ayesha and Nazia went to the spot where the quarrel was going on. She had narrated the incident by describing two unknown persons and third person named as Avi. The main role of assault is attributed to this Avi. She has specifically stated that Avi assaulted the deceased on his head with iron rod and the short person had assaulted the deceased on his face, forehead and abdomen. There is a specific reference to the applicant's name and she has stated that the applicant and one other person had pushed her daughters-in-law Naziya and Ayesha. That is the only role attributed to the applicant. Ayesha and Nazia have given exactly similar statements.

9. As mentioned earlier, there is a statement of one Kunal More, who has stated that in the same evening the applicant, the deceased and others were drinking liquor together. That means

that the applicant was known to the victim and, yet, the applicant was not named by the victim and no role was ascribed to the applicant. Considering these aspects, firstly, the victim's omission to name the applicant and failure to attribute any role to the applicant, is the most significant feature of this case against the applicant. Secondly, even otherwise the eye witnesses i.e. the lady members of the family of the victim have not attributed any specific role or weapon to the applicant. At the highest, they had described his role as the one who had pushed those two ladies. Considering this weak nature of piece of evidence against the applicant, he deserves to be released on bail. Hence, the following order :

ORDER

- (i) The applicant is directed to be released on bail in connection with C.R. No.I-291/2018 registered with Panvel City Police Station, on his furnishing a P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.
- (ii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)