

Anand

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

BAIL APPLICATION NO. 1952 OF 2019

Haider Ali Abdul Jabbar Shaikh

.Applicant

Vs.

The State of Maharashtra

.Respondent

Mr. A. H. Ponda i/b. Mr. Bhomesh R. Bellam, Advocate, for the
Applicant

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

CORAM : REVATI MOHITE DERE, J.

DATE : 19.09.2019

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. 43 of 2017 registered with the Aarey Police Station, Mumbai, for the alleged offences punishable under Sections 302, 114, 120B r/w 34 of the Indian Penal Code.

3. Perused the papers. According to the prosecution, the incident took place on 06.04.2017 at about 11.45 a. m.. The Complaint / FIR is lodged by Smt Papati Veerpandian Harijan (wife of the deceased - Veerpandian). Admittedly, the Complainant is not an eye witness to the alleged incident of assault on her husband. A perusal of the FIR /

complaint lodged by Papati Harijan shows that when she went to the spot, where her husband was lying injured, Shanmugam disclosed to her that her husband - Veerpandian was assaulted by Venkatesh (Shanmugam's nephew) and two unknown persons. Shanmugam is alleged to have disclosed that the weapon used for assaulting Veerpandian was a knife and a cement brick. Shanmugam is alleged to have also disclosed that one unknown person assaulted Venkatesh with a knife and Venkatesh and an unknown person assaulted the deceased with a cement brick. Admittedly, the Applicant has not been named in the FIR. Learned counsel for the Applicant submits that there is a discrepancy with respect to what is stated by the Complainant – Papati and Shanmugam's statement as well as the statement of another eye witness – Babu. A perusal of the statement of Nasir Shaikh shows that he witnessed one person assaulting with a koyta. He has stated that one unknown person assaulted Venkatesh with a koyta and another unknown person assaulted Venkatesh with a knife and the Applicant is alleged to have assaulted Venkatesh with a cement brick. In the supplementary statement recorded on the very same day of the incident i. e. 06.04.2017, Nasir Shaikh has not assigned any role to Venkatesh. The statement of Babu Yadav also discloses that what was used was a knife, koyta and a cement brick. Babu is alleged to have stated that the person who assaulted with the knife also assaulted with a cement brick. The Applicant has been identified as being one of the unknown person by

Babu, in the identification parade. The statement of Nasir Shaikh shows that the Applicant had given an extra judicial confession to him on the very day i. e. the date of the incident 06.04.2017. According to Nasir Shaikh, the Applicant and co-accused – Veera had visited his place and disclosed to him that they had assaulted Veerpandian with knife, koyta and stone. There is recovery of a sickle and blood stained clothes at the instance of the Applicant. The Post Mortem Report of Veerpandian shows that he had sustained 27 injuries, as revealed from Column 17 of the Post Mortem Report, which is tendered by the learned APP i. e. several incised wounds, stab wounds and fractures.

4. Considering the role of the Applicant, this is not a fit case to enlarge the Applicant on bail. The possibility of the Applicant tempering 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.)