

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

CRIMINAL BAIL APPLICATION NO. 1857 OF 2017

Hasan Ayub Shaikh	...	Applicant
V/s.		
The State of Maharashtra	...	Respondent

- Mr. Amrish Salunkhe for the Applicant.
- Mr. G. P. Mulekar, APP for the State

CORAM : PRAKASH D. NAIK, J.

DATE : 25th FEBRUARY, 2019.

P.C. :

1] This is an application for bail in CR no. 67 of 2016 registered with Mankhurd Police Station for the offence punishable under Sections 302, 452, 449, 504, 34 of IPC.

2] The case of the prosecution is that, the FIR was lodged by the wife of the deceased on 23rd February 2016 alleging that the son of the deceased was working with the co-accused and he had not received his salary and dues of Rs. 25000/-. The husband of the complainant was demanding the said amount. On 23rd February 2016, the husband of the complainant visited house of

the co-accused for demanding money, however, the amount was not paid and on the contrary, threats were issued to the complainant's husband and at about 7 pm on the same day, the applicant and the co-accused assaulted the husband of the complainant by fist blows. The applicant alleged to have threatened him by showing knife. The complainant's husband fell down. He was assaulted again by the accused by fist blows. As a result of assault, the complainant's husband was unconscious and subsequently, he was declared as dead.

3] The Learned Advocate for applicant submitted that the co-accused Vakil Khan has been granted bail by this Court by order dated 17th March 2017. There was no intention to commit murder. The applicant is in custody for a period of 2 years. Learned APP submitted that there are 16 eye witnesses to the incident including child witnesses. The specific role which attributed to the applicant is of assaulting the victim who died on account of head injury. It is further submitted that one more case was registered against the applicant. It is further submitted that the case of the accused who is granted bail, stands on different footing as he did not use knife while committing the offence.

4] I have perused the charge sheet. The FIR and the statements of the witnesses mentioned that the victim was assaulted by fist blows. Although knife was allegedly used for threatening the victim, the same was not used for assault. The post-mortem report indicates that there was contusion on right zygomotor area, 3 cm. The cause of death is "Death due to head injury".

5] It is pertinent to note that the co-accused Mohammad Vakil Nijamuddin Khan who is attributed the role of having assaulted the victim by fist blows along with the applicant, has been granted bail by this Court on 17th March 2017. The distinction which can be made between role of accused is that the applicant has used knife to threaten the victim. However, it is not the case of prosecution witnesses that the knife was used in assaulting the deceased. The Learned Counsel for the applicant pointed out that the case registered against the applicant for offence under Sections 326 323 504 506 IPC vide CR 262 of 2011 at Mankhurd Police Station has ended in acquittal. It is apparent that the witness has not stated that the applicant has caused an injury on

the head of the deceased. Considering the factual matrix of this case and the fact that the applicant is in jail for a period of above 2 years, bail can be granted to the applicant on the similar condition that was imposed on the co-accused while granting bail by this Court. Hence, the following order.

ORDER

- (i) Criminal Bail Application No. 1857 of 2017 is allowed.
- (ii) The Applicant is directed to be released on bail in connection with C.R. No. 67 of 2016 registered with Mankhurd Police Station, on his furnishing P.R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount.
- (iii) The applicant shall not enter into the jurisdiction of Mankhurd Police Station, till the conclusion of trial.
- (iii) The Applicant shall report to the concerned Police Station on first Sunday of each month between 10.30 am to 1.00 pm till framing of charge.

- (iv) The applicant shall attend trial Court on the date of every hearing of the case regularly unless exempted by Court.
- (v) Upon failure to attend any consequent dates, the Sessions Court can issue Non-bailable warrant and take applicant into the custody.

[PRAKASH D. NAIK, J.]