

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2163 OF 2019**

Nadeem Kadar Shaikh	...Applicant
Versus	
State of Maharashtra	...Respondent

Mr. Sushan Kunjuraman a/w Mr. Mahesh Kadam for the Applicant

Mr. P. H. Gaikwad-Patil, A.P.P for the Respondent-State

PI Mr. Ramchandra Valatkar from Mumbra Police Station, is present

CORAM : REVATI MOHITE DERE, J.
THURSDAY, 22nd AUGUST 2019

P.C. :

1 Heard learned counsel for the parties.

2 By this application, the applicant aged 19 years, seeks his enlargement on bail in connection with C.R. No. I-637 of 2018 registered with the Mumbra Police Station, Thane, for the alleged offences punishable under Sections 302, 324, 504 of the Indian Penal Code.

3 Perused the papers. According to the complainant-Simran Naushad Shaikh, the incident took place on 25th November 2018 at about 8:30 – 9:00 p.m. She has stated that the applicant and his mother were

residing in the next door flat/room and that on the said date and time, they heard a quarrel taking place between the applicant and his mother and that the applicant was abusing his mother. She has stated that the applicant's mother came to her house and requested her and her husband-Naushad Shaikh to resolve the dispute, pursuant to which, she, her husband-Naushad Shaikh (deceased) and her brother-Shahbaaz Khan went to the applicant's house. She has stated that the applicant was quarreling with his mother and was threatening to kill his uncle-Bashir and was abusing his mother, pursuant to which, she, her husband-Naushad Shaikh (deceased) and brother-Shahbaaz tried to make the applicant see reason. It is alleged that the applicant questioned, who were they to make him understand and accordingly entered the kitchen and brought a knife and stabbed her husband in his chest. She has stated that when another neighbour-Mustafa came on hearing hue and cry, the applicant also assaulted him and left the house to kill his uncle-Bashir. It appears that the complainant's husband was declared to be dead before admission to the hospital.

4 Learned counsel for the applicant submitted that the applicant has a psychiatric problem and was under medication for the same, even prior to the incident. He relied on the certificate issued by Jupiter Hospital

dated 18th September 2009, which shows that the applicant has given history of seizure disorder since six years. The report also shows that the applicant was on anti epileptic medication. Learned counsel also relied on the medical report issued by the Thane Central Prison, which shows that even after the incident, the applicant is suffering from psychiatric illness (in jail). The said report is on page 117 of the application. It appears from the said report that the applicant was sent to Prison Hospital where he was admitted on several dates, for his mental illness. It is also stated that the patient is aggressive and violent and had suicidal tendency and that he is being given psychiatric treatment and is kept under observation.

5 Learned counsel for the applicant has also filed an undertaking of the applicant's mother-Shaikh Suraiya Kadar, wherein, she has stated that the applicant is suffering from a mental ailment and is under medical treatment for the same. She has undertaken to take the full responsibility of the applicant, if enlarged on bail and will ensure the applicant's safety and also ensure that he will not harm others. She has undertaken to ensure that he is given all medical assistance and help. She has also undertaken to produce the applicant on the dates given by the trial Court. She has stated that she has moved to Dharavi from Mumbra and therefore, the question of tampering/contacting/threatening the witnesses will not arise.

6 It appears that the incident took place at the spur of the moment. Whether or not the offence would be one under Section 302 or a lesser offence, is a matter, which will be decided by the trial Court. The applicant is in custody since 26th November 2018. Investigation is complete and charge-sheet is filed. The applicant has no antecedents.

7 Having regard to what is stated above, in particular, the medical condition of the applicant, the application is allowed and the applicant is enlarged on bail on the following terms and conditions :

ORDER

- (i) The applicant be released on cash bail in the sum of Rs. 15,000/-, for a period of six weeks;

- (ii) The applicant shall within the said period of six weeks, furnish P.R. Bond in the sum of Rs. 15,000/- with one or two sureties in the like amount;

- (iii) The applicant shall not reside/enter in the jurisdiction of Mumbra Police Station, till the conclusion of the trial;

- (iv) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;
- (v) The applicant shall inform his latest place of residence and mobile contact number and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;
- (vi) The applicant to cooperate with the conduct of the trial and attend all the dates before the trial Court, unless exempted. The applicant to be accompanied by his mother while attending the trial Court;
- (vii) The applicant shall file an undertaking with regard to clauses (iii) to (vi) in the trial Court, within two weeks of his release;
- (viii) If there are two consecutive defaults in appearing before the trial Court, or breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

8 The application is accordingly disposed of.

9 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.

10 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.