

nsc.

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

CRIMINAL BAIL APPLICATION NO.2469 OF 2018

Shahid Mustafa Surme	...Applicant
Versus	
The State of Maharashtra	...Respondent

Ms.S.T.Mishra, for the Applicant.

Mr. A.R.Kapadnis, A.P.P for the Respondent - State.

Deputy Superintendent of Police – P.B.Jadhav, CID, Konkan Bhavan, Navi Mumbai, is present.

CORAM : REVATI MOHITE DERE, J.

DATE : 29th AUGUST, 2019

P.C. :

1. Heard learned counsel for the parties.

2. By this application, the Applicant seeks his enlargement on bail in connection with C.R.No.I-529 of 2010 registered with the Mumbra Police Station, Thane, for the alleged offences punishable under Sections 302 and 307 of the Indian Penal Code r/w Sections 37(1) and 135 of the Maharashtra Police Act.

3. Learned APP has tendered an additional affidavit of Pradip B. Jadhav, Deputy Superintendent of Police, State CID, Konkan Bhavan, Navi Mumbai. The same is taken on record. Learned APP states on instructions, that the trial has commenced and till date 9 witnesses have been examined in the present case and that the prosecution intends to examine 15 more witnesses. He submits that the trial of the applicant be expedited.

4. Learned Counsel for the applicant submits that the applicant is in custody since 2013 after his bail was cancelled and earlier for a period December, 2010 to October, 2011. She submits that the trial will take some time and as such the applicant be enlarged on bail. She further submits that there is a cross case lodged by the applicant with respect to the same incident. She submits that the applicant has also received some injuries in the said incident.

5. Perused the papers. According to the prosecution, the incident took place on 3rd December, 2010 at midnight. According to the complainant – Aslam Hasan Miya Surme, also an eye-witness, he was present at the spot i.e. near Tuba Hotel, Kausa, along with Malik Surme (deceased) and Liyakat Dhole (injured). The complainant has stated that

he had seen the applicant standing in the lane nearby. He has stated that after some time when he and his friend Liyakat Dhole and Malik Surme (deceased) were chitchatting and had placed an order for tea, suddenly one Mohammad Hasan Raut shouted 'Are Are'. He has stated that he saw the applicant assaulting Liyakat, on his neck with a Sattur. He has stated that when Malik (deceased) went to intervene in the said assault, the applicant assaulted him on his chest and abdomen. It appears that the applicant was arrested on the very same day i.e. on 3rd December, 2010 and was enlarged on bail by the Sessions Court on 3rd October, 2011. It appears that the applicant's bail was cancelled by the High Court vide order dated 17th April, 2013, pursuant to which, the applicant surrendered. The applicant was however granted liberty to file a fresh application, after his surrender. The said application filed, pursuant to the liberty granted, was rejected by the trial Court, pursuant to which, the aforesaid application has been filed.

6. There are two eye-witnesses to the incident, which clearly show the complicity of the applicant, that the applicant assaulted Liyakat and Malik, brutally. The postmortem report of Malik shows that he had sustained almost 13 incised injured on his person. The cause of death is stated to be 'Shock and Hemorrhage due to injuries to head and chest and abdomen involving vital organs with fracture of skull and ribs caused by

sharp edged heavy weapon/s and sharp edged tapering weapon/s'. The injury certificate of Liyakat shows that he too had sustained an incised wound on his neck, bone deep and over right shoulder. The said injuries are consistent with the ocular evidence.

7. As far as merits are concerned, considering the complicity of the applicant, the ocular evidence as well as the injuries sustained by the deceased, 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. Apart from the aforesaid, the trial has commenced and till date 9 witnesses have been examined in the present case. The prosecution intends to examine 15 more witnesses.

8. Hence, the application for bail is rejected and disposed of as such. However, since the applicant is in custody since 2013 after his bail was cancelled and earlier for a period December, 2010 to October, 2011, the trial of the applicant is expedited. The learned Judge to conclude the trial as expeditiously as possible and preferably within 9 months from the date of receipt of this order.

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. The prosecution to ensure that the Applicant and other accused in the said case are produced on every date given by the learned Judge, so that the case can proceed expeditiously. The prosecution to also ensure that all the witnesses are present on the dates given by the trial Court and that no un-necessary adjournments are sought, by the prosecution. The accused to also co-operate with the conduct of his trial.

11. Although, the application is rejected, the matter to be listed on 1st October, 2019, under the caption 'For Direction', in view of the earlier orders passed by this Court, with regard to the medical treatment provided to the prisoners.

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

REVATI MOHITE DERE, J.