

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

CRIMINAL BAIL APPLICATION NO. 3149 OF 2019

Ashpak Majharali Ansari ... Applicant

Versus

The State of Maharashtra ... Respondent

AND

CRIMINAL BAIL APPLICATION NO. 3150 OF 2019

Rizwan Majharali Ansari ... Applicant

Versus

The State of Maharashtra ... Respondent

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Mr. Farooque N. Momin a/w Mr. Gautam Jain, Advocates
for the Applicant in both application.

Mr. Y.M. Nakhawa, APP for Respondent-State in both
application.

P.S.I., D.C. Kini, Bhiwandi Town Police Station.

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CORAM : SANDEEP. K. SHINDE, J.

DATE : 23rd JANUARY, 2020.

P.C.

Heard.

1. Both the applications are under Section 439 of
Code of Criminal Procedure, 1973 ("Cr.P.C." for

short) in connection with Crime No.402 of 2018 registered with Bhiwandi City Police Station for the alleged offences punishable under Sections 302 and 327 read with 34 of the Indian Penal Code, 1860 ("IPC" for short).

2. The investigation in this case is over and charge-sheet has been filed.

3. The applicants are brothers. The alleged incident had occurred on 26.11.2018. Informant and other eye-witnesses attributed role to Rizwan (applicant in Bail Application No.3150/2019) who inflicted injuries by stabbing on the deceased person. The statement of Nabi and Anas, eye witnesses, corroborates the narration of the complainant and corresponding injuries were found and noted in the postmortem report. Besides, the statement of the complainant under Section 164 of the Cr.P.C. reinforces this fact. In view of the statements of the eye witnesses, the Bail Application No.3150 of 2019 of

Rizwan, is rejected.

4. It is unfolded in the investigation that the accused Ashpak was present at the scene of offence. The complainant who had witnessed the incident, at the first instance did not attribute role to the applicant in causing murder of the deceased person; however in statement recorded under Section 164 of Cr.P.C., on 25.01.2019 (after two months of the incident), alleged that the applicant had held back, the deceased to facilitate Rizwan, who inflicted repeated blows on the abdomen and chest of the deceased. As, against it, other eye witnesses said nothing against the Ashpak, except that the Ashpak, damaged the vehicles, parked around the scene of offence.

5. Learned counsel for the applicant submits there are no criminal antecedents against the Ashpak. Statement is accepted.

6. In view of the facts and circumstances and the evidence on record, applicant Ashpak is directed to be

released on bail, hence the following order.

ORDER

(i) Bail Application No.3150 of 2019 of Rizwan is rejected and the applicant - Ashpak in Bail Application No. 3149 of 2019, is directed to be released on bail in Crime No.402/2018 registered with Bhiwandi City Police Station, on furnishing P.R. Bond for the sum of Rs.30,000/- with one or more sureties in the like sum;

(ii) The applicant - Ashpak, shall report to the concerned police station on Monday of each week commencing from 27th January, 2020 between 11 am. to 01 pm. and shall continue to report til the charge is framed;

(iii) The applicant - Ashpak shall furnish the particulars of his residential address as well as permanent address and contact details to the investigating officer within seven days from the date of his release on bail;

(iv) The applicant - Ashpak shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

7. Applications are disposed off.

8. It is made clear that the observations made hereinabove shall be construed as expression of opinion only for the purpose of granting and or rejecting the bail and the same shall not in any way influence the trial in other proceedings.

(SANDEEP. K. SHINDE, J.)_