

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.3291 OF 2019

Pir Mohammad Mehboob Pathan .. Applicant

Vs.

The State of Maharashtra .. Respondent

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Dr. Uday P. Warunjikar for the Applicant.

Mr. S.V. Gavand, A.P.P. for the State.

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CORAM : SMT. BHARATI DANGRE, J.

DATED : 10TH DECEMBER, 2020.

P.C:-

1. The Applicant is seeking his release on bail in C.R. No.205 of 2019 registered with the Junnar Police Station, District Pune. On filing of the charge-sheet, R.C.C. No.319 of 2019 is registered. In the charge-sheet, the Applicant is indicted as Accused No.3 and the charges levelled are under Sections 302, 452 and 34 of the IPC.

2. The Complainant is one Imran Anwar Shaikh, who states that one Latif Pathan is his neighbour and there is a discord between the family of the Applicant and the family of Latif Pathan since last 4-5 years on account of a parcel of land which has been assigned to his mother by one Raghunath by a registered sale deed. This discord led to differences between the two families and it is alleged that the accused persons were

attempting to obtain the said property by threatening the Applicant and his family.

3. The Complainant has stated in his complaint that on 23/08/2019 after dinner, he along with his family, his brother Ashraf Shaikh, sister-in-law Nikat and their two children had gone to sleep. In the early hours and, to be precise at 6.00 a.m., on 24/08/2019 when his brother had gone for jogging along with his mother, the front door of the house was open. He states that his sister-in-law Nikat was reciting *namaz* whilst her two minor children were asleep, at that point of time, he heard a sound of someone banging the back door, which made him cautious. At that time, from the front door, one Nur Pathan entered the house and he could hear a loud shriek from his sister-in-law Nikat. When he attempted to peep inside the room, Nur Pathan restrained him but somehow he managed to enter the room and he saw Latif armed with an iron rod standing there. Latif gave a blow to his sister-in-law resulting into a bleeding injury and she fell down. At that time, the minor children were witnessing the incident from the corner of the room. It is alleged that the present Applicant – Pir Mohammed was standing next to Latif. The Complainant caught hold of him and shouted when Latif pushed him aside, causing an injury on his temple. When he raised alarm, Latif, Nur and Pir (Applicant) fled away. The neighbours gathered and took the sister-in-law Nikat to the hospital, where she was declared dead.

4. The submission of Mr. Warunjikar, learned counsel for the Applicant is to the effect that on perusal of the charge-sheet, the role

attributed to the Applicant can be discerned from the version of the Complainant and other witnesses and he is being ascribed the role of being present next to Latif. Neither the Complainant nor any other witness has attributed that the Applicant has assaulted the deceased or he is responsible for any injury to her. According to the learned counsel for the Applicant, even going by the statement of one Akshar Shaikh, aged 11 years, who is the son of the deceased, he has stated that when he was doing his homework and his mother was performing *namaz*, at that time, three accused persons barged into the house and the Applicant is ascribed the role of snatching the scarf worn by his mother and he alleged that Latif assaulted his mother on her head and she gave a shriek. At that time, his uncle stepped in, in an attempt to rescue them and he was caught by Latif and, thereafter, all of them fled away. Corresponding with the version of the prosecution, are the injuries mentioned in the postmortem report.

5. Perusal of the charge-sheet would reveal that the Applicant has not been assigned any overt act and he is said to have standing near the assailant. No doubt, Section 34 of the IPC is also invoked in the crime and the common intention would be established at the time of trial. At present, considering the fact that the investigation is complete and there is no recovery from the present Applicant and since his role in the entire crime has been clearly surfaced in the charge-sheet, in my considered opinion, he is entitled to be released on bail subject to the stipulation that on his release, the Applicant shall not pressurize the family members of the victim and, for that purpose, some stringent conditions need to be imposed. Hence, the following order:

ORDER

- (a) The Applicant – Peer Mohammad Mehboob Pathan shall be released on bail in C.R. No.205 of 2019 registered with the Police Station, Junnar, District Pune on executing P.R. bond to the extent of Rs.25,000/- and furnishing one or two sureties of the like amount.
 - (b) The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case and shall not tamper with prosecution evidence.
 - (c) The Applicant shall co-operate and mark his attendance in R.C.C. No.319 of 2019 pending against him in Sessions Court, once in every two months.
 - (d) He shall not enter the jurisdiction of Taluka Junnar, District Pune till completion of trial.
6. The Application is allowed in the aforestated terms.
7. All parties are directed to act on the downloaded copy of the order supplied by the Advocate under his seal and signature.

SMT. BHARATI DANGRE, J.