

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

CRIMINAL BAIL APPLICATION NO. 3630 OF 2019

Majahar Abdul Karim Khan

.... Applicant

Versus

The State of Maharashtra

.... Respondent

Ms. Anjali Patil, for the Applicant.

Mr. S. S. Pednekar, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 16th OCTOBER, 2020

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.390/2019 registered at Shivaji Nagar Police Station, Mumbai, under Section 302 read with 34 of the Indian Penal Code.

2. The F.I.R. is lodged on 10.8.2019 by one Jahid Faruqi in respect of murder of his brother Samiulla @ Saif. The prosecution story, in brief, is that Samiulla was having an affair with one Shabnur @ Mona. Accused Juber was earlier married to Shabnur, but, they were divorced. Juber did not like Shabnur's

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affair with Samiulla. On 10.8.2019, at about 4:00 a.m., Juber along with one Monu and the present Applicant went to the house of Shabnur and assaulted Samiulla with knife. Due to which, he succumbed to his injuries.

3. The postmortem notes show that there were about 18 injuries. Most of them were stab injuries all over the body and the cause of death was mentioned as “hemorrhage and shock due to stab to chest and abdomen”. The viscera was preserved for further investigation.

4. The Applicant was arrested on 10.8.2019 and since then he is in custody. The Applicant is brother of Juber. The charge-sheet is already filed and the investigation is over.

5. Heard Mrs. Anjali Patil, learned Counsel for the Applicant and Mr. S.S. Pednekar, learned A.P.P. for the State.

6. Learned Counsel for the Applicant submitted that the evidence against the present Applicant is very weak. The Applicant, in any case, is not attributed the main role of stabbing the deceased with any weapon. In fact, no weapon is attributed to the present Applicant. She submitted that the statements of eye

witnesses do not take the prosecution case any further. There is no incriminating recovery at the instance of the present Applicant. There are no criminal antecedents of the Applicant and, therefore, he deserves to be released on bail.

7. She specifically relied on the statement of mother of Shabnur, who has not named the present Applicant. She submitted that she was a natural witness and was knowing the present Applicant. She would not have failed to name the present Applicant if he was present. She also submitted that Shabnur's statement was recorded belatedly where the Applicant was named.

8. Shri Pednekar submitted that there are at least four eye witnesses. The most important among them is Shabnur, who was knowing everybody. He submitted that even other eye witnesses' statements indicate the presence of other two assailants who had accompanied Juber.

9. Shri Pednekar submitted that one Riyaz Sayyed, who was the Applicant's cousin has mentioned in his statement that Juber and the Applicant had confessed to him about commission of murder. He, therefore, opposed grant of bail.

10. I have considered all these submissions. The most important witness in this case is Shabnur @ Mona. Her statement is recorded on 17.8.2019. The incident has occurred on 10.8.2019 and there is no explanation given as to why her statement was not recorded earlier. She has given history of her marriage and divorce with the main accused Juber. On the fateful night of 10.8.2019, the deceased had come to her house at about 3:15 a.m.. She heard somebody was kicking the door from outside. The door was broken. The accused Juber and his friend Monu entered the house. They caught Saif and started assaulting him. Juber stabbed Saif on his chest and stomach. Monu assaulted him with kicks and fists. Shabnur raised shouts. Her mother Afsarjahan came there. Juber dragged Saif outside the house. Shabnur further mentions that the present Applicant was standing outside and then he also assaulted the deceased with kicks and fist blows. Shabnur's mother intervened and then the assailants left the place. Saif was taken to hospital. Police were informed. But Saif succumbed to his injuries.

11. Her statement is required to be seen in the light of the

statement of her mother Afsarjahan. Her statement is recorded on 20.8.2019. About the incident, she has stated that she reached the spot after hearing shouts from Shabnur. She saw that Juber was dragging the deceased towards Nala and his friend was assaulting the deceased with kicks and fist blows. She intervened. Juber and his two friends thereafter left the spot. This statement is important. Afsarjahan was mother of Shabnur. Shabnur was married to Juber. The Applicant was Juber's brother. Therefore Afsarjahan was knowing the present Applicant, but, very significantly she has not named the present Applicant in her statement, instead she has stated that Juber was accompanied by two friends. She has not even stated that Juber was accompanied by his brother. Therefore, there is considerable force in the submission of Mrs. Patil that the Applicant was not present at the spot.

12. The other eye witnesses Iqbal Khan, Fauzia Shaikh @ Nahid and Mohd. Kamal have not named the present Applicant. Except Juber, they were not knowing others. However, no identification parade is held to enable them to identify the suspects

including the present Applicant. Therefore, the case revolves around the statement of Shabnur and Afsarjahan.

13. There is no recovery of any incriminating weapon. The Applicant is not attributed any role of assault with weapon. If at all the role attributed to other assailants is compared with the role attributed to Juber, their role is comparatively minor. Even there the Applicant's connection is not properly established.

14. Though there is a purported extra judicial confession to the Applicant's own cousin, that statement is not very clear. In that statement, a general statement is made that Juber and the present Applicant confessed to him that they had committed murder. This only piece of evidence is not sufficient to keep the Applicant behind bars till the entire duration of trial.

15. Considering all these aspects, the Applicant can be released on bail. The Applicant does not have criminal antecedents. The Applicant himself did not have any motive or intention to commit murder of the deceased. The Applicant had not carried any weapon and he had not even held the deceased when Juber inflicted the stab wounds.

16. In this view of the matter, the following order is passed:

ORDER

- (i) In connection with C.R. No.390/2019 registered at Shivaji Nagar Police Station, Mumbai, the applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) with one or two sureties in the like amount.
- (ii) Looking at the prevailing circumstances, it may not be possible to the Applicant to furnish sureties immediately. Therefore, initially the Applicant is permitted to furnish cash bail for the same amount. The Applicant will have to furnish the sureties, as directed, within three months from today.
- (iii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)

Deshmane (PS)