

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 59 OF 2021

Sayyad Shaker Ali Sayyad Naser Ali

Applicant

Versus

The State of Maharashtra

Respondent

Mr. K.K. Naik, Advocate for the applicant.

Mr. A.V.Deshmukh, APP for respondent/State.

CORAM : M.G. SEWLIKAR, J.

DATE : 8th September, 2021.

PER COURT :

1. This is an application under Section 439 of the Code of Criminal Procedure for releasing the applicant on bail.

2. Facts leading to this application are that on 25th September, 2019 at about 1.00 am, one Sk. Irfan Sk. Jalil, a friend of informant's elder brother, deceased Sayyad Jamir Sayyed Jahir, came to the house of the informant and told him that he received a call from elder brother of the informant. He further told that deceased Sayyad Jamir Sayyad Jahir had called him up informing that the applicant, Sk. Daud @ Shahrukh s/o Najimoddin and Sayyad

Shahjad Ali Sayyad Naser Ali were demanding money. He (Sk. Irfan Sk. Jalil) asked the deceased to handover phone to accused Shahrukh. At that time, deceased told him that accused Shahrukh and Naser were beating him. Therefore, informant went to Savera hotel near Kasambari Dargah. Motorcycle of the deceased was parked there. It had blood stains. Accused Sayyad Shahjad Ali was present there. He broke down and told informant that all the three accused demanded money from the deceased for drugs but the deceased did not pay the amount as a result of which, Sayyad Shahjad Ali held the deceased from behind, accused Sayyed Ali and accused Shahrukh stabbed the deceased in the abdomen and in the back. Informant went to the hospital where the deceased was admitted. He was not in a position to speak. The deceased passed away on 24th September, 2019. First Information Report came to be lodged on these allegations on 25th September, 2019, on the basis of which, offence under Section 302 read with Section 34 of the Indian Penal Code came to be registered against the applicant.

3. Heard Shri Naik, learned counsel for the applicant and Shri Deshmukh, learned APP for the State.

4. Shri Naik submitted that the only evidence against the applicant is in the nature of extra judicial confession allegedly made by accused Sayyad Shahjad Sayyad Naser. There is no eye witness to the incident. Clothes having blood stains have been recovered from the applicant. He submitted that since 25th September, 2019, the applicant is behind the bars. Applicant has no criminal antecedents.

5. Learned APP submitted that there is eye witness to the incident. The eye witness has mentioned presence of all the three accused and that accused Shahrukh was holding a knife. He submitted that this evidence clearly implicates all the three accused. He submitted that the applicant is having criminal antecedents. Crime No. 224/2017 under Section 380 read with Section 34 of the Indian Penal Code is pending against him.

6. Charge-sheet has been filed. The only evidence against the applicant is in the nature of extra judicial confession allegedly made to the informant. Statement of the informant is recorded. Admittedly, extra judicial confession is a weak type of evidence. Except clothes having blood stains, no evidence is forthcoming against the applicant. CA report is still not filed. Applicant has not

committed any offence prior to the offence in question. Since charge-sheet is filed, there is no question of pressurising the witnesses or tampering of evidence. Applicant is a permanent resident of Aurangabad. He is not likely to flee from justice. Having regard to the totality of the circumstances, I am inclined to release the applicant on bail. Hence the following order :-

ORDER

- i) Application is allowed.
- ii) Applicant be released on PR Bond of Rs. 50,000/- (Rs. Fifty Thousand only) with one solvent surety in the like amount in connection with Crime No. 0308/2019 registered with Cantonment (Chhavani) Police Station, Dist. Aurangabad, for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code.
- iii) Application is disposed of.

(M. G. SEWLIKAR)
Judge