

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.807 OF 2021

SAYED ABDUL RAHEMAN SYED JEELANI
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. Joydeep Chatterji
APP for Respondents: Mr. A.V. Deshmukh.

AND

BAIL APPLICATION NO. 808 OF 2021

SAYED ALI AKBAR HASHMI S/O. SAYED
FAYAZODDIN HASHMI
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for applicant Mr. S.J. Salunke.
APP for respondent : Mr. A.V. Deshmukh

CORAM : V.G. BISHT, J.

ORDER RESERVED ON : 11th August.2021

ORDER PRONOUNCED ON : 21st August, 2021.

ORDER:

1] These applications have been filed by the applicants under Section 439 of the Cr.P.C. to enlarge them on bail in connection with Crime No. 020/2021 registered with Police Station, Kotwali, Parbhani, Dist. Parbhani under Section 302, 307, 324, 294, 323, 143, 147, 148, 149, 506 of IPC.

2] On 30.1.2021, at about 8.00 p.m. the informant Ahmed Khan Salim Khan and his 2 brothers Imran Khan and Majid Khan (since deceased) were present in their house alongwith other family members. Informant's mother Shamim Begum, wife Reshma and sister Nigah Sultana informed him that at about 12.30 p.m. while his son Allauddin had gone to play football, Syed Nakid (accused) had beaten him. Therefore, they had been to Nakid to give him an understanding. Lateron, Nakid and his father Sayed Naim had come to their house and gave filthy abuses. Hearing this, the informant and his brothers went to the house of Nakid and there, an exchange of words took place. Accused Hashmi, resident of the neighbourhood then telephoned the brothers of accused Naim. At about 8.30 p.m., while the informant and his brother Imran were inside the house, the deceased Majid was standing near the house and all of a sudden they heard cries of deceased and, therefore, came out of the house. They saw accused Nakid and his father Naim, accused Sayed Jeelani (Applicant in Bail Application No. 807/21) accused Sayed Ibrahim and his son Abdul Sayed Rahman and accused Syed Ali Akbar Hashmi (Applicant in Bail Application No. 808 of 2021). Accused Syed Moin and 2/3 unknown persons were there. They further saw accused Sayed Naim and Nakid beating the deceased by means of stick and iron rod. At that time, accused Hashmi i.e. applicant in bail application No. 808 of 2021, picked up the stone and hit it on the head of the deceased by uttering that he would kill the deceased and then Sayed Abdul Rahman gave a blow of stick on the head of the deceased. The informant and his brother Imran went to save the deceased. At that time accused Sayed Moin beat them by means of stick and accused Sayed Ibrahim hit them by hurling stones. It is further alleged that applicant Sayed Jeelani then started beating the informant by means of stick on his

cheeks and head, as a result of which, he fell down. The other accused also beat the mother, sister and brother of informant.

3] It is further alleged that applicant Sayed Ali Akbar Hashmi then came shouting and saying that all of them should be killed and then, hit stone on the head of the deceased Majid Khan. When the deceased was taken to the hospital, he was declared brought dead.

4] Mr. Joydeep Chatterjee, learned counsel for the applicants, at the very outset submitted that a counter-complaint arising out of the same incident has been filed by the co-accused Sayed Ibrahim Sayed Babu on the basis of which Crime No. 49 of 2021 came to be registered on 6.3.2021 under Section 306, 324, 323, 143, 147, 148, 149, 506 of IPC against the present informant and others. As far as the applicant in Bail Application 807 of 2021 is concerned, according to learned counsel, he had given only a single blow of stick. The statements of all the witnesses are identical and they all are interested witnesses. The learned counsel also submitted that the applicant in Bail Application No. 807 of 2021 is a schizophrenic patient. There are no criminal antecedents. As in respect of the same incident there is complaint and counter complaint filed between the parties, no purpose would be served by keeping the applicants behind bars and, therefore, they should be released on bail, argued learned counsel.

5] Mr. Salunke, learned counsel for applicant Sayed Ali Akbar Hashmi (Applicant in Bail Application No. 808/2021), submitted that at the relevant time, he was at a medical shop, at a distance of 3 k.m. and to substantiate that the learned counsel also invited my attention to the affidavit of Mohd. Shahid Abdul Habib Ansari, owner of the medical shop

and would submit that even the said applicant Hashmi can be seen in the CCTV footage and, therefore, this ground should also be considered while deciding the application.

6] Mr. Deshmukh, learned APP, took me through the contents of the FIR and statements of witnesses and vehemently submitted that the role of each applicant and other accused have been outlined with respective weapons. The presence of the applicants is not disputed. According to learned APP, all these aspects are duly considered by the learned trial court while rejecting their application for bail. In such circumstances, there being no merit in the applications, same are liable to be rejected.

7] As far as applicant Sayed Abdul Raheman Sayed Jeelani is concerned, plain reading of the FIR would reveal that he only had assaulted the informant by means of stick on his cheek and head. However, the medico legal Certificate (Injury Certificate) forming part of the investigation papers would show that the informant had sustained abrasion on his left temporal mandibular joint and contusion 2x1 cm on left hand, by means of hard and blunt object. The nature of injury was simple.

8] As far as the statements of witnesses, who are none other than the family members of the informant, show that the applicant Sayed Abdul Raheman Sayed Jeelani alongwith others had uttered that all the family members of the informant should be killed and that he had pelted stones on the family members. Having regard to the role allegedly played by applicant Sayed Abdul Raheman Jeelani, in my considered opinion, he deserves to be enlarged on bail.

9] This brings me to the role played by applicant Sayed Ali Akbar Hashmi. Contents of FIR go to show that applicant Hashmi had given blows of stone on the head of the deceased while the deceased was lying down. There are statements of all the family members including the son of the informant, his mother, brother, brother's wife, and sister of informant. They have unisonally and in one voice very clearly stated in their respective statements that applicant Sayed Ali Akbar Hashmi had given blows of stone on the head of the deceased. This applicant alongwith others was also uttering that the family members of the informant should be killed. The post mortem report clearly shows that the cause of death of deceased was due to head injury.

10] The submission of the learned counsel that, at the relevant time, present applicant Syed Ali Akbar Hashmi was present at a medical shop and affidavit of the concerned shop owner to that effect filed by the applicant indicate that the applicant has taken a plea of alibi. This is a matter of evidence. Even otherwise, the time gap between the alleged presence of the applicant at medical shop and the time of incident is not that long, which would prima facie rule out the possibility of applicant Syed Ali Akbar Hashmi being present at the scene of offence. All these aspects would be looked into at the time of trial. Prima facie, I am satisfied, in the light of the material discussed as above, that applicant Sayed Ali Akbar Hashmi had used stone while giving blows on the head of the deceased Majid Khan. The post mortem report also substantiate that cause of death was head injury.

11] In such circumstances, I am of the considered opinion that the applicant Hashmi has not been able to make out a case for enlarging

him on bail. Therefore, he is not entitled to be released on bail in the the facts and circumstances of the case.

12] For the aforesaid reasons, I pass the following order.

: O R D E R :

[a] Bail application No. 807 of 2021 filed by applicant Sayed Abdul Raheman Jeelani is allowed. He be released on bail in connection with Crime No.020 of 2021 registered at Police Station, Kotwali, Dist. Parbhani on her executing PR bond in the sum of Rs. 25,000/- and on furnishing one or more sureties in the like amount, on the following conditions :-

[i] He shall not tamper with the evidence and influence the witnesses.

[ii] Bail before trial court.

[b] Bail application No. 808 of 2021 filed by Sayed Ali Akbar Hashmi stands rejected.

**[V.G. BISHT]
JUDGE.**

grt/-