

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2998 OF 2021**

Altaf Miraso Shiakh	...	Applicant
Versus		
The State of Maharashtra	...	Respondent

Mr. Kedar J. Patil a/w Ms.Gargi Joshi a/w Mr. Jitesh Mundhwa, for the Applicant.

Ms. Anamika Malhotra, APP, for the State-Respondent.

CORAM : V. G. BISHT, J.

**RESERVED ON : 15th November, 2021.
PRONOUNCED ON : 18th November, 2021.**

PC:-

. The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in C.R. No. 68 of 2021 registered with Shahapur Police Station, District-Kolhapur for the offences punishable under Sections 302, 364, 504 r/w 34 of the Indian Penal Code.

2 It is the case of prosecution that on 15/03/2021 the complainant was informed by her sister-in-law Mrs. Shabana and mother-in-law that

someone had apprehended her husband, namely, Alim Gadwal ('deceased' for short) on the accusation that he had stolen bicycles. Informant then with the help of Shabana's mobile called on the number from where Shabana had received a call and spoke with the person. The person revealed his name as Altaf Shaikh (Applicant) and further said that her husband i.e. deceased had stolen two cycles and if he doesn't get moneys equivalent to the price of bicycles, he would beat her husband. As the informant could not arrange the moneys, she could not pay the amount.

3 The prosecution next contends that on 16/03/2021 at about 9-00 a.m. informant's brother-in-law informed informant that deceased is lying dead opposite to industries near a dhaba in the open land. When the informant reached there, she found the deceased lying there. Accordingly, FIR came to be lodged.

4 Mr. Patil, learned Counsel for the applicant, submits that if the statements of witnesses are seen then the role assigned to the applicant is that he allegedly beat the deceased by fist and kick blows. Even Postmortem Report does not show the exact cause of death. Moreover, investigation is completed. There are no criminal antecedents. In such

circumstances, applicant deserves to be enlarged on bail, argued learned Counsel.

5 Ms. Malhotra, learned APP, on the other hand, opposed the submissions by contending that the deceased was seen lastly in the company of applicant and other accused. There are statements of eye witnesses, who have stated that the applicant and other co-accused were assaulting the deceased on the day of incident. There being sufficient evidence on record to establish the complicity of the accused in the offence, the application need not be considered, argued learned APP.

6 Perused the investigation papers including the FIR. I have also gone through the notes of Postmortem Report wherein the opinion as to the cause of death is reserved till the arrival of report of viscera. However, there are injuries which were noted during the course of autopsy at column no. 17 and 18. The injury Nos.1,2,3 and 4 were contusions. Injury Nos. 6 and 7 were abrasions while injury Nos. 8,9 and 10 related to peeling of skin over right scapular region, over head at occipital region and over left leg posteriorly. The injury Nos. 1,2,3,4,5,6 and 7 mentioned in column Nos. 17 and 18 were ante-mortem whereas injury Nos. 8,9,10 were postmortem. Column No. 19 shows that there

were no injuries to scalp and there was no skull fracture. Thus, having regard to the Postmortem Report and nature of injuries, prima-facie it can be seen that the injuries were not good enough to cause death.

7 This takes me to the statement of eye witnesses. The first witness is Govind Raju Chougule, a Bar Owner. His statement shows that on 15/03/2021 at about 10.15 p.m. the applicant along with co-accused Krishna Chavan and the deceased had been to his hotel and after consuming alcohol applicant started beating deceased by means of fist and kick blows by saying that the deceased had stolen the cycles of his employees. However, later on the deceased was separated and the deceased then went away. It is apparent from this statement that what this witness had seen was beating of deceased that to by means of fist and kick blows at the hands of the applicant. It is pertinent to note that this witness also saw the deceased leaving the hotel. What happened thereafter nobody knows. Similar is the statement of Gopal Raju Chougule i.e. brother of Govind Raju Chougule.

8 The next statement is of Jaisingh Keshav Machhare. It shows that on 15/03/2021 at about 10.15 p.m. he had been to consume liquor at Kolhapur Dhaba. It is the same dhaba of which Govind Raju Chougule

is the owner. According to him also he had seen the applicant and co-accused Kirshna Chavan beating one person by kick and fist blows and on the next day when he saw the dead body of that person he identified him as the same person who was beaten by the applicant and co-accused Krishna Chavan in the night of 15/03/2021.

9 The next statement is of Harish Ramchandra Naik. He also saw the applicant and co-accused beating the deceased by means of fist and kick blows . However, according to him, the deceased was then dropped by his friend Ashok Shirgave at a certain distance. Again there is nothing to show what happened thereafter.

10 From the above statements of witnesses what emerges is that all the witnesses had seen the applicant and other co-accused beating the deceased by fist and kick blows. It is also clear that the deceased had left the place after the said beating and then there is no evidence to show as to what happened thereafter.

11 In the above context, it is pertinent to note that the injuries from the Postmortem Report which I have already referred herein-above. Thus, there is no medical evidence or the opinion of the Autopsy

Surgeon to show that the deceased died because of the injuries as noted in the Postmortem Report.

12 The prosecution has also produced on record some conversation amongst sister-in-law, informant, in the form of panchanama dated 30/03/2021. No doubt, it is in consonance with the prosecution case that as the deceased had stolen the bicycles, the applicant had demanded compensation to the price of bicycles allegedly stolen by the deceased. The authenticity of this conversation is yet to be established and the admissibility or otherwise can be decided at the time of trial.

13 Assuming for the sake of arguments that there was demand of moneys by the applicant in lieu of bicycles allegedly stolen by the deceased and further that the applicant and co-accused beat the deceased by fist and kick blows, as is already noted, but there is no cogent, prima-facie and convincing evidence to show because of that beating by accused deceased died.

14 For the foregoing reasons, I am of the considered opinion that the applicant has made out a prima-facie case for bail. Hence, the following order.

ORDER

- (i) Applicant-Altas Miraso Shiakh shall be released on bail in C.R. No. 68 of 2021 registered with Shahapur Police Station, District-Kolhapur on his executing P .R. bond in the sum of Rs.25,000/- with one or more sureties in like amount.
- (ii) The applicant shall not tamper with the prosecution evidence and shall attend the trial regularly.
- (iii) The observations made herein-above are prima-facie in its nature for the purpose of deciding the bail application only. The trial Court shall not be influenced by the observations while deciding the case on merits.
- (iv) Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.
- (v) The application is allowed in the aforesaid terms.

(V. G. BISHT, J.)