

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

CRIMINAL BAIL APPLICATION NO. 170 OF 2021

Alim Salim Pathan	 Applicant
Versus	
The State of Maharashtra	 Respondent

Mr. Kuldeep S. Patil, for the applicant.
Ms. Pallavi N. Dabholkar, APP for the State/Respondent.

**CORAM :SARANG V. KOTWAL, J.
DATE :15th MARCH, 2021**

P.C. :

1. The applicant is seeking his release on bail in connection with C.R.No. I-261 of 2019 registered at Sangli City Police Station, Sangli, on 19/06/2019 under sections 302, 504 read with Section 34 of the Indian Penal Code. The applicant was arrested on 19/6/2019 and since then he is in custody. The investigation is over and the charge-sheet is filed.

2. Heard Mr. Kuldeep Patil, learned counsel for the applicant and Ms. Pallavi Dabholkar , learned APP for the State.

3. The prosecution case is that, the applicant was in jail in connection with a murder case. During that time, his son Mustafa was looked after by the applicant's sister Aasma. The deceased Jamir in this case was Aasma's husband. After the applicant was released from jail in connection with the murder case, there used to be frequent quarrels between Aasma and the applicant. Jamir also used to tell him to look after his son Mustafa. On the date of the incident, one Sharukh held Jamir's hand from behind and the applicant gave blow with knife resulting in his death.

4. The FIR was lodged by Yusuf Pathan. He is son of deceased Jamir. After narrating the dispute between the parties, he has stated that on 19/6/2019, at about 1.00 O'clock in the night, Jamir asked the applicant and Sharukh as to what was his plan regarding Mustafa. All of them were outside the house of the applicant. The informant was with his father Jamir, mother Afasana and uncle Dadapir . The deceased did not give proper answer and went inside his house. The applicant and Sharukh

abused Jamir and started beating him. Sharukh held Jamir's hand and stabbed him with knife. The informant tried to save Jamir but he was pushed away by the applicant. Jamir was taken to Civil Hospital. While undergoing treatment, Jamir succumbed to his injuries. After that, this FIR was lodged.

5. Shri Patil learned Counsel for the applicant submitted that the incident had occurred on spur of moment. There was no intention to commit murder of the deceased. The applicant was in his house and the deceased had entered his house. Therefore, the deceased was the aggressor. He submitted that only one blow was given. Shri Patil also relied on the statement of first informant recorded under section 164 of Cr.P.C., where he has not supported his own FIR. Similarly the other eye witness Husain Jamadar has also not supported his story given in F.I.R. when his statement was recorded u/s 164 of Cr.P.C.

6. Learned APP opposed this application. She submitted that the manner in which the deceased was assaulted shows

definite plan in committing his murder. The quarrel on that day was not an isolated instance but the quarrels were going on for many days. There is a recovery of knife at the instance of the present applicant. This also shows his guilty mind and intention.

7. I have considered these submissions. The post mortem notes show that there was a vertical stab wound over anterior abdomen wall of dimension 3 cm x 1 cm. It was 2 cm below sternum and it was cavity deep. There were another CLW on right leg. The cause of death was mentioned as “ shock due to liver injury”.

8. Besides the first informant there are other eye witnesses. Afsana widow of the deceased has seen the incident. Afsana's statement shows that she and others were trying to stop the applicant but he was not listening to anybody. Then he had assaulted the deceased. Though the first informant and his friend Husain Jamadar have not supported the prosecution case, in their statements u/s 164 of Cr.P.C., other eye witnesses have not

changed their version. The manner in which the deceased was assaulted shows clear intention on the part of the applicant to cause such bodily injury which in ordinary course of nature would certainly cause death. In this view of the matter, no case for grant of bail is made out. The application is rejected.

(SARANG V. KOTWAL, J.)