

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

BAIL APPLICATION NO.638 OF 2020

Abdul Kalam Alimuddin Shaikh

.. Applicant

Versus

State of Maharashtra

.. Respondent

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Mr.Prakash Shetty i/b. Mr.Sarthak P. Shetty, Advocate for the Applicant.

Mr.H.J. Dedhia, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATED : JUNE 21, 2021.

P.C. :

This is an application for bail. The applicant is arrested on 22nd May, 2019, in connection with C.R.No.262 of 2019, registered with Shivaji Nagar Police Station, Govandi, Mumbai.

2 The case of the prosecution is that about a month ago, the complainant started residing at Bainganwadi, Govandi alongwith her family after constructing hut on the property belong to her mother. Some persons who were indulging in illegal construction and sale of room and extorting money from

residents, namely, Aslam Qureshi, Kalam, Sufiyan, Tipu and others came to their residence and demanded money from complainant's husband. On 20th May, 2019 at about 08:00 p.m., 3 to 4 unknown persons visited the residence of complainant and informed the husband of the complainant that he has been called by Aslam and Kalam and took him with them. Complainant's husband returned home at about 02:00 a.m. on 21st May, 2019, and, he informed that he was assaulted by Kalam, Sikander, Tipu, Sufiyan and Appu with fist and kick blows knife causing abrasion his back and threatened him that Aslam had demanded money. He should give the amount immediately or else he would be killed. On 21st May, 2019 at about 02:00 p.m., complainant's husband left the house. He returned home at 03:00 p.m., in injured condition. He was taken to hospital. On the way he informed the complainant that for not paying hafta, Kalam, Sufiyan, Sikander, Tipu, Appu and others at the instance of Aslam took him to Bainganwaid and stabbed with knife. The FIR was registered on 22nd May, 2019, for offences under Sections 387, 307, 120-B, 143, 144, 147, 148, 364(a), 506(II) IPC. Supplementary statement of the complainant was recorded on 24th May, 2019. She stated that on 21st May, 2019, her husband had informed her that, at the instance of Aslam, he was assaulted

by Kalam, Sufian, Tipu, Sikander and Appu. However, on 23rd May, 2019, when her husband regained consciousness, he informed her that he was assaulted by Aslam, Kalam, Sikander, Sufiyan, Tausif and Ahmed. Appu and Tipu were not present at the time of assault. Statement of Hanif (complainant's husband) was recorded on 24th May, 2019. He stated that on 21st May, 2019 at 02:00 p.m. Kalam had assaulted him with knife and Sikander assaulted with rod and others assaulted with fist /kick blows. Injured died on 14th July, 2019. Section 302 of IPC was added.

3 The contention of learned counsel for the applicant is that there was no intention to kill and the offence under section 302, is not made out. The victim was admitted in Sion hospital on 21st May, 2019, and, was discharged from hospital on 2nd June, 2019. Thereafter, he was admitted at Somaiya hospital on 13th June, 2019, and, discharged on 15th June, 2019. He was again admitted in J.J. Hospital on 26th June, 2019, and, was discharged from the hospital on 1st July, 2019. On 13th July, 2019, the injured was again admitted in J.J. Hospital and he died on 14th July, 2019. The cause of death as per postmortem note shows that, "evidence of septicemia in a known operated case of stab injury". The medical report of the victim shows that as per initial history the

victim had a fight with some person and in that fight he was wounded. Victim was a known case of chronic alcoholism and that from the history provided in the medical case paper, it is apparent that he was under the influence of liquor and button. While the victim was admitted in J.J. Hospital on 26th June, 2019, there was history of vomiting for 4 to 5 days, and, he was discharged on 1st July, 2019. The medical evidence indicate that the victim had sustained 4 injuries at the time of admission and 2 of them were one day old and 2 injuries were one hour and 15 minutes old. He was repeatedly admitted in the hospital and died on 14th July, 2019. Hence, the offence under Section 302 of IPC would not be attracted in this case. The prosecution is relying on the dying declaration, which was recorded on 24th May, 2019. The victim died on 14th July, 2019. His statement was recorded by PSI Ganesh Jadhav. The statement of the victim was not recorded by Special Executive Magistrate or any independent authority other than investigating officer. The applicant is in custody from 22nd May, 2019.

4 Learned APP submitted that specific role has been attributed to the applicant. The victim was assaulted with knife. Stab injury was caused by the applicant. Knife is recovered from applicant. The statement of the victim is in the form of dying

declaration. There is eye witness to the incident. The offence is of serious nature. Applicant is involved in four other cases. Hence, the application of bail may be rejected.

5 In rejoinder, learned counsel for the applicant submitted that C.R.No.119 of 2011, registered for the offence under Section 307 of IPC has resulted in acquittal. Two other cases referred to *vide* C.R.No.291 of 2012 and 386 of 2012, were registered in the year 2012, and, thereafter, the fourth case was registered in 2017 *vide* C.R.No.502 of 2017, under Section 324 and 504 of IPC. None of the case is relating to offence of extortion.

6 I have perused statement of the complainant, statement of the victim. Initially the offence is registered under Section 307 of IPC and for other related offences. The incident had occurred on 21st May, 2019. The statement of complainant was recorded on 22nd May, 2019 (FIR) and 23rd May, 2019. According to her, the injured had disclosed her involvement of accused including applicant. No specific role of accused was informed. She was not informed that applicant had assaulted by knife. The medical case paper show that the applicant was

admitted in hospital at least on three occasions, and, he was discharged, as stated hereinabove. The postmortem examination report, the cause of death certificate issued by the medical officer refers to evidence of septicemia in a known operated case of stab injury. Final opinion reserved pending for chemical analysis report. It appears that one blow was given on the stomach. The victim died after about 50 days. Applicant is in custody for a period of about two years. It is debatable whether Section 302 of IPC would be attracted in this case. At this stage, no finding to that regard is given. However, the factual aspect and the period of custody undergone by the applicant, further detention of the applicant is not necessary and bail can be granted on certain conditions.

:: ORDER ::

- (i) Bail Application No.638 of 2020, is allowed;
- (ii) Applicant is directed to be released on bail in connection with C.R.No.262 of 2019, registered with Shivaji Nagar Police Station, Govandi, Mumbai, on executing PR bond in the sum of Rs.25,000/-, with one or more sureties in the like amount;

- (iii) Applicant shall stay out of the jurisdiction of Shivaji Nagar Police Station, Govandi, Mumbai, till the conclusion of trial;
- (iv) Applicant shall not tamper with the evidence;
- (v) Applicant shall appear before the trial Court regularly on the date of hearing, unless exempted by the Court;
- (vi) Applicant shall furnish details about place of his residence to the investigating officer, after he is released on bail;
- (vii) Applicant is permitted to furnish provisional cash bail in the sum of Rs.25,000/-, for a period of eight weeks, in lieu of surety;
- (viii) Bail Application No.638 of 2020, stands disposed of accordingly.

(PRAKASH D. NAIK, J.)