

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

CRIMINAL BAIL APPLICATION NO. 952 OF 2021

Mr. Imtiyaz Faizul Rehman Shaikh @ Baaza ... Applicant

versus

The State of Maharashtra

.... Respondent

.....

Ms. Jyoti R. Shahu, for the Applicant.

Mrs. M. R. Tidke, APP for State- Respondent.

P.S.I. D. B. Kadu, Shivaji Nagar Police Station, Mumbai present.

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CORAM : SARANG V. KOTWAL, J.

DATE : 16th JULY, 2021

(Through Video Conferencing)

P.C. :

. The applicant is seeking his release on bail in connection with C.R.No.612/2019 registered at Shivaji Nagar Police Station, Mumbai on 28th December 2019 under Sections 307, 323 and 34 of Indian Penal Code (for short "IPC"). Subsequently, after death of the injured Section 302 of I.P.C. was added.

2. Heard Ms. Jyoti R. Shahu, learned Counsel for the

applicant and Mrs. M. R. Tidke, learned APP for State.

3. The F.I.R. was lodged on 28th December 2019 by one Zeenat Ansari, who was the wife of the deceased Iqbal alias Pappu. She is not an eye witness. She came to know about the incident in the night between 26th and 27th December 2019. In the morning at about 4.00 a.m., she came to know that her husband Pappu alias Iqbal was admitted to Rajawadi Hospital. She went there. She came to know that her husband was already discharged from Rajawadi Hospital and was taken to a private hospital namely Sai Hospital at Chembur. She went there. He had suffered one injury below his armed pit on the right side. The injured Iqbal was not responding to treatment. Therefore, he was taken to Sion Hospital, Mumbai by the first informant. In the Sion Hospital, the informant came to know that there was some quarrel between Iqbal and the applicant and at that time, the applicant had stabbed Iqbal. He was helped by the other accused Khushnoor. On this basis, F.I.R. is lodged.

4. The injured succumbed to his injuries on 2nd January

2020 and thereafter, Section 302 of I.P.C. is added.

5. Learned Counsel for the applicant submitted that there was no intention to commit murder of the deceased as far as the applicant is concerned. The statements of the eye witnesses show that the incident had occurred at the spur of moment in a sudden fight. Their statements also indicate that the applicant himself had made efforts to take the injured to a private hospital for better treatment. Learned Counsel therefore, submitted that the offence can not fall within the definition of 'murder'. The applicant is in custody since 8th January 2020. The investigation is over and the charge sheet is filed. Therefore, some leniency may be shown to him.

6. Learned APP opposed this application. She submitted that there are three eye witnesses to the incident. The offence is of murder therefore, bail should not be granted to him.

7. I have considered these submissions and in particular I have considered the statements of eye witnesses Anil Kishan Chandra, Sabir Ali and Irfan Shaikh. Statements of Anil and Sabir

Ali show that on 26th December 2019 at about 11.30 p.m. all of them were present at Shivaji Nagar taxi park. At that time, present applicant, Khushnoor and others were present there. At that time, a quarrel started between Iqbal and the present applicant and they were abusing each other. The applicant and Khushnoor started beating Iqbal with hands. Suddenly, the applicant took out a sharp weapon and stabbed Iqbal below right armpit and then he ran away. These witnesses Anil and Shabbir took the injured to Rajawadi Hospital, Ghatkopar. Iqbal's wife was informed. Interestingly, these statements further mentioned that all the abovenamed persons came to the hospital. At that time, the applicant was also present and he suggested that the injured be taken to a private hospital. Accordingly, the injured was taken to private hospital at Chembur. The statement of Irfan also refers to some conversation between the injured Iqbal and the accused i.e. the present applicant and Khushnoor. Iqbal was telling the applicant that if the applicant returned Rs.3.5 Lakh and if he paid the expenses for Iqbal's treatment, he would not lodge the F.I.R. against him. At that time, the applicant had agreed and had left

the hospital. After that, the injured Iqbal was taken to Sion hospital and then he succumbed to his injury. The Post Mortem notes which are produced by learned APP today are taken on record and marked "X" for identification. There are nine injuries. Most of them are therapeutic wounds and scratch abrasions. The main injury appears to be the one attributed to the present applicant i.e. the stab wound. There were sutures. The Post Mortem mentions that there was one horizontally sutured wound and one vertically placed suture wound. It indicates that the applicant had inflicted one stab injury on the injured. The cause of death was mentioned as shock and hemorrhage following stab injury to chest and abdomen associated with pneumonia.

8. It appears that the incident had occurred on the spur of moment in a sudden fight. According to the eye witnesses, the applicant gave one blow which ultimately resulted in his death. But he survived for a couple of days and in the mean time, there was negotiation between the deceased and the applicant. The significant feature is that the applicant was instrumental in taking the deceased to a private hospital for better treatment. All this

indicates that the applicant might not have had the intention to commit murder and therefore, the offence may not fall within the definition of murder. It could be a lesser offence. The investigation is over and the charge sheet is filed. The applicant does not have any antecedents. In this view of the matter, the applicant can be released on bail.

9. Hence, the following order.

ORDER

(i) The applicant is directed to be released on bail in connection with C.R.No.612/2019 registered at Shivaji Nagar Police Station, Mumbai on executing P.R. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount;

(ii) The Bail Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)