

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

CRIMINAL BAIL APPLICATION NO. 1451 OF 2021

Mr. Noor Mohammad Mehboob Pathan Applicant
Versus
The State of Maharashtra Respondent

Dr. Uday P. Warunjikar for Applicant.
Smt. A. A. Takalkar, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 25th JUNE, 2021
(Through Video Conferencing)

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No. 205 of 2019 registered at Junnar police station, Dist. Pune, on 24/08/2019, under sections 302, 452 r/w. 34 of the Indian Penal Code (for short 'IPC'). The applicant was arrested on 24/08/2019 and since then he is in custody. The investigation is over and the charge-sheet is already filed.

2. Heard Dr. Uday Warunjikar, learned counsel for the applicant and Smt. Takalkar, learned APP for the State.

3. The prosecution case is reflected in the First

Information Report (for short 'F.I.R.') itself, lodged by one Imran Shaikh in respect of murder of his sister in law Nikat. He has stated in the F.I.R. that, he was residing with his joint family. There was a common place. The ownership of that place was disputed by the informant on one side and Latifs's family on the other. Because of that, there were frequent quarrels between the two groups.

4. Between the night of 23 and 24/08/2019 the informant was sleeping in the outer room of his house. His mother, his son and Ashraf were also sleeping in that outer room. In the inner room; Ashraf, his wife Nikat and his two sons were sleeping. In the morning of 24/08/2019, at about 6:00a.m. Ashraf had gone out for jogging. The informant's mother had also gone out for jogging. The main door of the house was open. Nikat was offering prayers. At that time, the informant heard a big sound. The informant saw that the applicant was standing next to him. In the meantime, the informant heard a big shout given by Nikat from the inner room. The informant tried to go in, but he was obstructed by the applicant. But even then, the informant went

inside. He saw that, Latif was standing there with a heavy iron rod in his hand and he had given a blow on Nikat's head. She was lying motionless in that room. The other accused Peer Mohammad Pathan was standing next to Latif. The informant raised shouts. The accused ran away from the house. Nikat was taken to Government hospital, but she was declared dead before admission. On this basis, the F.I.R. was lodged and the applicant was arrested.

5. Learned counsel for the applicant submitted that, the co-accused Peer Mohd. Pathan, who is similarly placed, is granted bail by this court (Coram: Smt. Bharti Dangre, J.) vide order dated 10/12/2020 passed in Criminal Bail Application No.3291 of 2019. He submitted that, on the ground of parity the applicant deserves to be released on bail. He submitted that, in any case, the applicant had not played any role and, therefore, the act attributed to Latif cannot be attributed to the present applicant. The applicant, according to the first informant, was standing in the outer room, therefore, if Latif had exceeded any common intention by giving the fatal blow, the applicant cannot be held responsible for Latif's act.

6. Learned APP relied on the statement of son of the deceased who has stated that, the applicant was present in the inner room when the blow was given to Nikat and applicant instigated Latif in committing that assault.

7. I have considered these submissions and with the assistance of both learned counsel, I have perused the charge-sheet, as well as, the order granting bail to the co-accused Peer Mohd. Pathan. The postmortem notes show that the deceased had suffered six wounds. Fatal wound was obviously on the head. The cause of death was mentioned as, "Cardio pulmonary arrest due to hemorrhagic shock due to head injury". Apart from the narration of incident given by the first informant in the F.I.R., the statement of the child witness Akdas, who was son of the deceased Nikat, is important. He has stated that, when the deceased was offering prayers all the three accused came inside their house, accused Peer Mohd. Pathan removed the mat, the applicant told Latif to assault the deceased and at that time the accused Latif gave a blow with his weapon on Nikat's head.

8. Thus, both these statements of the informant, as well

as, of this child witness show that, all the three accused were present in the house but the blow was given by the co-accused Latif. Other accused Peer Mohd. Pathan is granted bail by this court, as mentioned earlier. In this view of the matter, on the ground of parity, the applicant also deserves same treatment and deserves to be released on bail. Though, the child witness has stated that the applicant had instigated the main accused, informant's statement does not reflect this allegation. In fact, informant's statement shows that the applicant was in the outer room when blow was given on the deceased in the inner room. The applicant has sufficiently made out a case for grant of bail. It is made clear that, question of sharing any common intention and all other questions are left open to be decided during trial. The observations made in this order are restricted to passing of this order only. Since the applicant is claiming parity with Peer Mohd. Pathan, condition imposed on him are imposed on the applicant.

9. Hence, the following order :

ORDER

- (i) In connection with C.R.No. 205 of 2019 registered at Junnar police station, Dist. Pune

the applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.

- (ii) The Applicant shall attend the trial regularly.
- (iii) The applicant shall not enter the jurisdiction of Taluka Junnar, District Pune, till completion of the trial.
- (iv) The applicant shall not tamper with the evidence, directly or indirectly.
- (v) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)