

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL BAIL APPLICATION NO. 1221 OF 2020**

Yusuf Mehmood Shaikh @ Bicchu

... Applicant

V/s.

The State of Maharashtra

... Respondent

Mr.M.S. Adenwala a/w. Ms.Divya R. Gupta for Applicant.

Mr.Amit Palkar, A.P.P. for Respondent-State.

CORAM : A.S. GADKARI, J.**DATE : 11th February 2021.****PC. :**

This is a successive application for bail under Section 439 of the Code of Criminal Procedure in CR No.391 of 2016, dated 24th October 2016 registered with Mahim Police Station, District - Mumbai, for the offence punishable under Section 307 read with 34 of the Indian Penal Code. The earlier application for bail bearing No.1536 of 2018 was dismissed as withdrawn by this Court by its Order dated 1st August 2018. There is no change in circumstance from the date of passing of last Order, except passage of time. However, at the persistent insistence of the learned counsel for applicant, I have again heard the present application on merits.

2. Heard Mr.Adenwala, learned counsel for the applicant and Mr.Palkar, learned A.P.P for the respondent-State. Perused entire chargesheet.

3. The First Information Report is lodged by Mohd. Ajmal Kasam Shaikh, the injured in the present crime. The prosecution case in brief is that, due to earlier enmity between co-accused Khalid Abdul Rajak Kazi and the applicant herein, the said co-accused in connivance with the applicant and absconding accused Fakrulla Amir Badsha Shaikh assaulted informant, when he was travelling on an Activa Scooter from Dharavi Road, Mumbai. The role attributed to the applicant is that, he hit the informant with an iron rod on his head from backside. In his statement dated 24th October 2016, he has categorically stated that, after he received the said blow on his head and failed down, he saw that one unidentified person was driving the motorcycle and the applicant (Bicchu) was a pillion rider. The applicant was holding an iron rod in his hand and therefore, the informant realized that, it is the applicant alone who has hit him with the said rod.

4. The Medical Certificate issued by KEM Hospital Parel, Mumbai, dated 19th November 2016, duly corroborates the version of the informant of receiving a grievous injury to his head on frontal region with a blunt weapon. Though the learned counsel for the applicant tried to canvass that, the witness, namely Richard Peter Fernandes @ Richi, who was driving the said two wheeler on which the informant was travelling, did not corroborate the

version of the complainant, perusal of his statement clearly indicates that, he fully corroborates the informant on material counts. The iron rod allegedly used in the present crime has been recovered at the instance of applicant under a panchanama dated 6th March 2017.

5. In view of this Court, the version of the informant narrated in the F.I.R. appears to be reliable as there was no reason for the informant to falsely implicate the applicant in the present crime. The informant immediately after he failed on the ground from the two wheeler had seen the applicant holding a rod in his hand and fleeing away from the scene of offence on motorcycle. The material available on record *prima-facie* shows the complicity of the applicant in the present crime.

6. After taking into consideration the gravity of offence and serious allegations against the applicant, this Court is of the view that, applicant cannot be released on bail.

Application is accordingly rejected.

[A.S. GADKARI, J.]

Omkar S.
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