

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

CRIMINAL BAIL APPLICATION NO.1409 OF 2020

Firoz Akbar Shaikh

.... Applicant

versus

State of Maharashtra

.... Respondent

.....

- Mr.Satej Jadhav i/b. Sugandh B. Deshmukh, Advocate for Applicant.
- Mr.Ajay Patil, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 18th JUNE, 2021

(Through video conferencing)

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.293/2020 registered with Lasalgaon Police Station, Nashik, under sections 302, 307, 323, 143, 147, 149, 188, 269, 270 r/w 34 of the Indian Penal Code and under section 4 r/w 25 of the Indian Arms Act. The Applicant was arrested on 17/06/2020 and since then he is in custody. Investigation is over and the charge-sheet is filed.

2. The prosecution case is in respect of commission of murder of one Chetan Bairagi and assault caused to the first informant Akash Shejval.

3. The FIR is lodged by one Akash Shejval. He has stated that the informant and his friend Chetan Bairagi came back to Lasalgaon at about 08.30 p.m. from the village of informant's wife. While they were going back towards Indiranagar, to the informant's house. They saw that about 10 to 15 persons were standing on the road. The informant used his horn. Those persons allowed their car to proceed. The Applicant had seen nine known persons who are named in the FIR including the present Applicant. They saw that those persons were celebrating accused Sahil Shaikh's birthday. While the informant's car proceeded further, somebody pelted stone at his car. The informant stopped the car. He got down. At that time accused Arun Mali and Sahil Shaikh started beating him. The others also joined them. The FIR mentions that the accused Sahil removed a knife and gave blows on the informant's waist and thigh. Sahil

and others also assaulted the informant's friend Chetan. The informant went towards him. He saw that Chetan had injuries to his stomach. Others came to the spot and both of them went to the police station first and then to government hospital. However, the informant's friend Chetan was declared dead.

4. Heard Mr.Satej Jadhav learned counsel for the Applicant and Mr.Ajay Patil, learned APP for the State.
5. Learned counsel for the Applicant submitted that the incident had occurred on the spur of moment. The Applicant is not attributed any specific role nor is he attributed any weapon. When his clothes were seized, no blood stains were found on his clothes. From the statement of witnesses specific role is attributed to other accused Arun Mali and Sahil Shaikh. He therefore submitted that there was no common object and therefore the Applicant deserves to be released on bail.
6. Learned APP opposed this application. He submitted

that one person was injured and other was murdered. The Applicant was part of the unlawful assembly. Therefore section 149 of IPC is properly applied.

7. I have considered these submission. The post-mortem notes show that the deceased Chetan had suffered six injuries. Out of which one was abrasion over waist, there were incised wounds and stab wounds on the abdomen and thigh. The cause of death was mentioned as 'Shock due to stabbed injuries to abdomen.'

8. The supplementary statement of the informant mentions that Sahil Shaikh was having a sword for cutting the cake. Accused Arun was having a knife. Arun had given blows with knife on the informant and Chetan. The others had assaulted them with kicks and fist blows. There are statements of eyewitnesses namely Sachin Vinchoo, Saurabh Shinde, Jeevan Pagare, Siddharth Jorvekar and Sagar Shejval. Their statements are consistent. They have stated that after the informant's car

had passed from there, the quarrel started. The accused had gathered to celebrate accused Sahil's birthday. He had cut his cake with a sword. After the quarrel started the accused Arun gave blows with knife on the deceased and the first informant. The others had taken part in the incident and had assaulted them with kicks and fist blows. Thus, it appears that there was no premeditation or preparation. The incident had occurred suddenly starting from a quarrel. The Applicant did not have any weapon. The sword which was carried, was specifically brought for cutting the cake. Material does not disclose that the Applicant was aware that the other accused Arun had brought a knife to give blows on the deceased and the first informant. Therefore at this stage, there is sufficient doubt as to whether the Applicant can be roped in by virtue of section 149 of the IPC. However, at this stage, it would not be proper to observe anything further. This question is left open to be decided by the trial Court. However, the Applicant has sufficiently made out the case for his release on bail.

9. Hence, the following order :

ORDER

- (i) In connection with C.R.No.293/2020 registered with Lasalgaon Police Station, Nashik, 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) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)