

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

CRIMINAL BAIL APPLICATION NO. 1461 OF 2020

Aaftab Hasan Shaikh

.... Applicant

Versus

The State of Maharashtra

.... Respondent

Mr. Ganesh Bhujbal for Applicant.

Mrs. J. S. Lohokare, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 16th FEBRUARY, 2021

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No. 709 of 2020 registered with Kondhwa police station, Pune, under sections 302, 323, 504 and 120-B of the Indian Penal Code (for short 'IPC'), under section 4 r/w. 25 of the Indian Arms Act and under section 37(1) 135 of the Maharashtra Police Act.

2. Heard Shri. Ganesh Bhujbal, learned counsel for the applicant and Smt. Lohokare, learned APP for the State.

3. The prosecution case is in respect of murder of one Bablu. The First Information Report (for short 'F.I.R.') is lodged by Babulu's uncle. He is an eye witness. The F.I.R. is lodged on the day of incident i.e. on 01/06/2020. He has stated in his F.I.R. that the deceased was on inimical terms with the main accused Saif Sayyad and Tausif Sayyad. On 01/06/2020, at about 5:30p.m. the informant and the deceased were returning home from their shop. Their two wheeler was intercepted by four persons including the aforementioned Saif Sayyad and Tausif Sayyad. There were two unknown persons with them. The assailants started assaulting the deceased with their weapons. Thereafter they left the place. The deceased was removed to the hospital, but he was declared dead at the time of admission. The postmortem notes show that there were 16 injuries and the cause of death was 'death due to chop injuries over head'.

4. Shri. Bhujbal submitted that, though there are eye witnesses, but they were not knowing all the assailants except two named persons. The investigating agency has not conducted any test identification parade to enable the witnesses to identify the

suspects. He submitted that, the applicant was arrested on 04/06/2020 and since then he is in custody. The investigation is over and the charge-sheet is already filed. There is no recovery at his instance.

5. Learned APP, on the other hand, submitted that, there is evidence of conspiracy and there are witnesses who had seen all the accused together prior to the commission of the offence.

REASONS

6. I have considered these submissions. As submitted by Shri. Bhujbal, there are eye witnesses, but they have named only two of the assailants. All the other eye witnesses have not named anybody. The first informant has named only two accused. Another eye witness Shadab Ansari has seen four unknown persons assaulting the deceased. He was not knowing any of the assailants. Another eye witness Sohail Khan has simply described the incident but he was not knowing any of the assailants. There is statement of son of the deceased. He has named two accused Saif Sayyad and Tausif Sayyad but he has not named other two assailants who were unknown to him. In this case the investigating agency had to held

test identification parade, but it was not done, therefore, there is no prima facie evidence against the present applicant. The clothes of the applicant were recovered. The panchanama shows that, there were blood stains on his shirt, however, there is no connecting C.A. report till today showing that it was the blood group of the deceased. Therefore, even that circumstance is not against the applicant. The only evidence for consideration against the present applicant is in respect of conspiracy, as alleged.

7. Learned APP invited my attention to the statement of one Asif Shaikh. However, his statement does not say anything much against the present applicant and it is not incriminating against him. There is only one statement against the present applicant which needs serious consideration. It is given by one Gaurav Patil. He has stated that, on 01/06/2020 main accused Saif Sayyad and Tausif Sayyad had met this witness and the present applicant at around 1:30p.m. They said that Bablu had troubled them a lot and they wanted to cause harm to Bablu. Saif Sayyad and Tausif Sayyad had brought sharp weapons. They went together on a two wheeler. This witness has stated that the

applicant and Arfat followed them on another two wheeler. This witness was asked to joint them but he had refused. This witness came to know about the incident on the next day. As rightly pointed out by Shri. Bhujbal, this witness's statement is recorded on 05/06/2020 i.e. after the arrest of the present applicant on 04/06/2020. This statement shows that the applicant and Arfat had followed the main accused on a different two wheeler. This is the solitary piece of evidence against the present applicant. The statement itself was recorded after the arrest of the present applicant, therefore, there is substance in the argument of Shri. Bhujbal that it could have been recorded falsely to create some evidence against the present applicant as there was no other evidence. In this view of the matter, this circumstance will have to be tested during the trial. The applicant is in custody since 04/06/2020. The investigation is over and the charge-sheet is filed. Therefore, I am inclined to grant bail to the present applicant. All the observations made in this order are made only for the purpose of deciding this application. The trial court shall not be influenced by any of these observations during the trial.

8. Hence, the following order :

ORDER

- (i) In connection with C.R.No. 709 of 2020 registered with Kondhwa police station, 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 concerned Police Station on every fortnight for the period of one year from today.
- (iii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)