

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1650 OF 2020

Mabiya Abbas Shaikh, Age 40 years,
R/o.Dwara Asha Singh, Ram Rahim
Mitra Mandal, Nityanand Nagar,
Ghatkopar (W), Mumbai
(Presently lodged in Bycylia Central Prison) Applicant
versus
The State of Maharashtra Respondent

Ms.Anjali Patil for applicant.
Mr.Y.M.Nakhwa, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 13th January 2021

PC :

1. This is an application for bail in CR No.682 of 2019 registered with Ghatkopar Police Station. Initially the offences were registered under Sections 302, 307, 326, 323, 504, 427, 364, 143, 144, 146, 148, 149, 109, 114 r/w 34 of Indian Penal Code. The FIR was lodged by Fahim Mohammed Shoaib Khan on 10th October 2019.

2. The case of the complainant is that on 9th October 2019 he along with his friend Abdul Waheed Abdul Hameed Khan had visited the area of Vaitagwadi at Ghatkopar. They came across Zuber Salim Khan, Saber Iqbal Shaikh Shahid @ Chingu Iqbal Shaikh, Abdul Hamid @ Imu. Zuber demanded cigarette from Abdul Wahid. He refused to part with cigarette. There was quarrel between them. Both of them assaulted each other. The complainant and his friend

arrived at the place. Thereafter the complainant called his friend Mehmood Ali and Saif Abdulla Khan at Ghatkopar. After their friends joined them, they went to Vaitagwadi to pick up their motorcycle. At that time, Zuber, Saber, Shahid @ Chingu, Abdul Hamid @ Imu came there. They picked up quarrel with the complainant and his friend. Saif Khan tried to be peace maker, however, Abdul Hamid @ Imu assaulted him by wooden bamboo on his head. Saif tried to run away. At that time Shahid @ Chingu assaulted him on his leg by wooden bamboo. Saif fell down. Saber tried to assault Saif by iron rod on his head, which he managed to avoid. However, a blow was given on his leg. Thereafter Zuber abused the complainant and his friends and assaulted him. Zuber fell down after losing balance and sustained head injury. They also caused damage to motorcycle of Waheed. Complainant and his friends started shouting for help. Some shop keepers came forward to help them. However, they were threatened by the accused. Complainant and his friends left the injured at the place of residence and managed to run away. The FIR was then lodged at about 1.00 am on 10th October 2019. During the course of investigation statements of witnesses were recorded. Saif Khan succumbed to the injuries and was declared dead. Spot panchanama was recorded. Statements of other persons who were assaulted during the incident dated 9th October 2019, were recorded. They were the obvious eye witnesses to the incident. On completing investigation charge sheet was filed.

3. The applicant was arrested on 17th October 2019. He had preferred application for bail before the Sessions Court which has been rejected.

4. Learned advocate for applicant submitted that the applicant has been falsely implicated in this case. None of the eye witnesses who were part of the incident dated 9th October 2010, which had occurred at about 6.00 pm, had named the applicant or shown her presence at the scene of offence. The statements of some of the witnesses were recorded belatedly in which it is alleged that in the second part of incident, the applicant was involved in assaulting the deceased Saif Khan by bamboo stick. It is submitted that statement of Raju Pandey was recorded subsequently and he had allegedly attributed role of assault to the applicant. However, at the initial point of time when he acted as panch witness, he did not disclose that he is the eye witness to the incident. The applicant is lady. She is not having any criminal antecedents. It is further submitted that case of prosecution itself makes it clear that the victim was assaulted on his head and leg in the incident, which had occurred at 6.00 p.m..

5. Learned APP vehemently submitted that the incident may be divided into two parts. In the first incident which had occurred on 9th October 2010 at 6.00 p.m, the applicant was not present. However, statements of witnesses recorded during investigation disclose that the victim Saif Khan was brought at the place of second incident in auto rickshaw and at that time the applicant and the co-accused Fatima has assaulted the deceased. It is submitted that there are eye witnesses to the second incident which have attributed overt act of assault to the applicant. It is further submitted that post mortem report indicate that there were several injuries sustained by the victim which was the result of bamboo sticks used by the accused while assaulting him. It is, therefore, submitted that the application may be rejected.

6. I have perused the charge sheet. It is apparent that the quarrel had ensued between the complainant, his friends Abdul Waheed Abdul Hamid and four others. The applicant was not present during the said quarrel. The applicant admittedly did not participate in the assault which had occurred at 6.00 p.m. According to prosecution, the victim Saif Khan was assaulted on his head by giving severe blow by co-accused in the incident which had occurred at 6.00 p.m.. He was also assaulted on his leg. The statements of all these eye witnesses who were at the receiving end, were recorded. They have not spoken about the participation of applicant in the assault. According to prosecution, however, there was a second incident in which the applicant has assaulted the victim. It is pertinent to note that initially the quarrel had erupted between complainant Waheed and assailants. Thereafter complainant and his friend had called Saif Khan and another person. There is nothing on record to indicate that applicant had any enmity with Saif Khan. Statement of Raju Pandey was recorded in respect to the alleged CCTV footage wherein he has identified the persons seen in the CCTV footage assaulting the victim Saif Khan. According to him, applicant is seen in CCTV footage assaulting Saif by wooden stick. It is pertinent to note that he has acted as panch witness on 16th October 2019. At that time he did not disclose that he is witness to the incident. His statement u/s 161 of Cr.PC was recorded belatedly. It is true that in the second incident the applicant is alleged to have assaulted by bamboo stick. The injuries on head and leg were also attributed to the co-accused in the first incident. Fatima who had assaulted by iron rod on the head of Saif Khan, has been granted bail by Sessions Court apparently on medical grounds. Considering the submissions and circumstances, bail can be granted to the applicant on certain terms and conditions.

7. Hence, I pass following order :

ORDER

- (i) Criminal Bail Application No.1650 of 2020 is allowed and disposed of;
- (ii) The applicant is directed to be released on bail in connection with CR No.682 of 2019 registered with Ghatkopar Police Station, Mumbai, on executing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- (iii) The applicant shall report Ghatkopar Police Station once in a month on every first Saturday between 11.00 and 1.00 pm till further orders.

8. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or e-mail of a digitally signed copy of this order.

(PRAKASH D. NAIK, J.)

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