

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

CRIMINAL BAIL APPLICATION NO. 1718 OF 2020

Shahrukh Salim Tade ... Applicant

Versus

The State of Maharashtra ... Respondent

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Mr. Nitin Sejpai a/w. Ms. Akshta Desai, for the Applicant.

Mr. S. S. Pednekar, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 09th APRIL, 2021

PC :

1. The applicant is arrested on 17th September 2020 in connection with C.R.No.I-539/2020 registered with Pant Nagar Police Station, Mumbai for offence punishable under Section 302, 323, 504, 506 read with 34 of Indian Penal Code (for short 'I.P.C.'). The First Information Report (for short 'F.I.R.') was lodged on 25th August 2020.

2. It is the case of the prosecution that on 23rd August 2020 the brother of complainant Yogesh gave call to him and informed that Akash Sardar, Shahrukh Tade and his friends are assaulting him. The complainant rushed to the spot. He noticed that Akash Sardar and

Avinash Bhopale were assaulting his brother Yogesh by fist blows on his chest, abdomen and back. The complainant tried to intervene and save his brother. Avinash alias Bala was abusing Yogesh. Akash Sardar had repeatedly assaulted Yogesh by fist blow on various parts of body. While the complainant was trying to intervene Akash Sardar, Avinash alias Bla Bhopale and Shahrukh Tade (applicant) assaulted him. The complainant managed to rescue his brother Yogesh from the assailants and took him home. Yogesh complained of chest pain. He fell unconscious. He was taken to hospital. He was declared dead. Pursuant to registration of F.I.R., statements of witnesses were recorded. Statement of the father of the deceased Vijay Garud was recorded on 27th August 2020. Statement of other witnesses were also recorded. On completing investigation, charge-sheet is filed.

3. Learned Advocate for the applicant submitted that no role of assault has been attributed to the applicant qua deceased Yogesh. None of the witness alleged that the applicant had assaulted the deceased. In the F.I.R., it is mentioned that the applicant had joined subsequently. It is mentioned that the deceased was being assaulted by the other accused. The F.I.R. only mention that the complainant tried to intervene and at that time, he was assaulted by applicant and others by fist blow. The allegations are vague. No weapon was used

during assault. Section 302 of I.P.C. is not attracted. There are no criminal antecedents against the applicant. CCTV footage does not attribute any role of assault to the applicant. Fatal blow is attributed to the co-accused.

4. Learned APP submitted that the presence and participation of the applicant is established through statements of witnesses. The complainant has referred to presence of the applicant. Information was received by the complainant that the applicant is one of the person who was involved in assaulting Yogesh. Post Mortem Report refers to the nature of injury sustained by the deceased. Although, no weapon was used. There were repeated blows given on the body of the victim by the accused. The Post Mortem Report indicate that cause of death is cerebro pulmonary edema with intra-alveolas Hemorrhage.

5. On perusal of the F.I.R and other statements of witnesses, it is apparent that first informant has attributed role of assault to the co-accused. The F.I.R. does not mention that the applicant had assaulted the victim. The other statements recorded during the investigation also attribute vague role to the applicant. There is no specific overt act attributed to the applicant having assaulted the deceased. The applicant is in custody since 17th September 2020. The applicant is

not having any criminal antecedents. Bail can be granted.

6. Hence, the following order.

ORDER

(i) Criminal Bail Application No. 1718 of 2020 is allowed.

(ii) The applicant is directed to be released on bail in C.R.No.I-539/2020 registered with Pant Nagar Police Station, Mumbai, on executing P.R. bond in the sum of Rs.25,000/- with one or more sureties in the like amount;

(iii) The applicant shall attend the concerned Police Station once in three months on first Saturday of month between 11.00 a.m. to 01.00 p.m. until further order;

(iv) The applicant shall not tamper with the evidence:

(v) The applicant is permitted to furnish provisional cash bail in the sum of Rs.25,000/- for a period of eight weeks;

(vi) Criminal Bail Application stands disposed
of accordingly.

(PRAKASH D. NAIK, J.)