

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2027 OF 2019**

Altamesh Salim Pathan

...Applicant

Versus

State of Maharashtra

...Respondent

Mr. Piyush Toshnival a/w Mr. Aniket Nikam i/b. Mr. Vivek Arote for the Applicant.

Mr. S.V.Gavand, A.P.P for the Respondent-State.

CORAM : REVATI MOHITE DERE, J.
DATE : 15th FEBRUARY, 2021

P.C. :

1. Heard learned Counsel for the parties.
2. By this application, the applicant seeks his enlargement on bail in connection with C.R.No.538 of 2018 registered with the Bhosari Police Station, Pune, for the alleged offences punishable under Sections 302 read with 34 of the Indian Penal Code; Section 4(25) of the Arms Act; and Section 37(1)(3) read with 135 of the Maharashtra Police Act.
3. Learned Counsel for the applicant submits that the prosecution

case rests on circumstantial evidence and that the circumstances on record, do not point to the complicity of the applicant. He submits that the applicant is only 18 years of age and that he had no motive to kill the deceased – Sana Ul Haq Sayyed Shaikh. He submits that although the applicant has been identified by the eye witnesses, no specific role has been ascribed to the applicant, whether he is the person who came on the motorcycle with accused No.1. He submits that there is no recovery of any weapon nor does the applicant have any antecedents.

4. Learned APP opposes the application. He, however, does not dispute the fact, that the applicant has no antecedents.

5. Perused the papers. According to the prosecution, the incident took place on 29/09/2018 at about 9.00 to 9.30 p.m. The complainant – Wahid Shaikh is Sana Ul Haq's (deceased) nephew. It is alleged that one unknown person called Habibur and asked about a juice order and thereafter, the complainant's uncle spoke to the said person. It is alleged that, after some time, two persons came to Sana Ul Haq's house and that Sana Ul Haq (deceased) went with the said two persons to Bhosari. It is alleged that at that time, Habibur was cooking food and that he saw the said two persons. The complainant has further alleged that at about 10.30 p.m.,

when he asked Habibur about his uncle, Habibur disclosed what he had seen. According to the complainant, on 30/09/2018, at about 8.00 a.m., he received a call from PSI Shri. Deshmukh, who informed him that his uncle was murdered. Pursuant thereto, the complainant – Wahid lodged an FIR. In the said FIR, the complainant had expressed suspicion on Rubel and his associates. The motive alleged was a dispute between the deceased and accused No.1 - Rubel on account of a juice shop. In the FIR, the complainant has stated, that their neighbour – Rajkumar Malakar had seen one of the two persons, who had come to pick up Sana Ul Haq (deceased). As far as the applicant is concerned, there is no recovery of any weapon at his instance. The applicant has been identified in the Test Identification Parade, by the complainant, however, the complainant was not present in the shop, when Sana Ul Haq allegedly left with the accused. Witness Habibur has identified accused No.1 – Rubel and the applicant, however, according to Rajkumar Malakar only one person had come to the house. Habibur has not stated, after the Test Identification Parade, which person had visited the house. As far as witness Rajkumar is concerned, the witness on last seen, he was not sent for Test Identification Parade. It is, thus, prima facie, not clear whether the applicant was the person who had visited the house of the Habibur. No motive is attributed to the applicant. Nor was the applicant concerned with the juice business run by the Sana Ul Haq.

The applicant is aged 18 years and has no antecedents. In these circumstances, further detention of the applicant is not warranted.

6. Accordingly, the application is allowed and the applicant is enlarged on bail on the following terms and conditions:

ORDER

- (i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 15,000/- with one or two sureties in the like amount;
- (ii) The applicant to cooperate with the conduct of the trial and attend the trial Court on all dates, unless exempted;
- (iii) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;
- (vi) The applicant shall file an undertaking with regard to clauses (ii) in the trial Court, within two weeks of his release;
- (v) If there is breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's

bail.

7. The application is allowed in the aforesaid terms and is accordingly disposed of.

8. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

9. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.