

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.200 OF 2022

Mohammad Raza Rahees Ahmed ...Applicant

vs.

The State of Maharashtra ...Respondent

Mr. Anilkumar Patil a/w. Ms. Sonal Rajput, for the Applicant

Mr. P.H. Gaikwad, APP, for the State.

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CORAM : N. J. JAMADAR, J.

DATE : JULY 12, 2022

P.C.:

1. The applicant, who is arraigned in C.R. No.51 of 2021 registered with Ayesha Nagar police station, Malegaon for the offences punishable under sections 302, 143, 149, 120(B), 506(ii), 427, 507, 212 read with 34 of Indian Penal Code, 1860, has preferred this application for bail.

2. The prosecution case runs as under:-

a] Anis (the deceased) is brother of Raees Ahmad, the first informant. Farid Ahmad is another brother of the first informant and the deceased. Since few days prior to the occurrence, Ashfaq, a friend of the deceased, harboured a grudge against the deceased as the later did not pay heed to his request to give the motor-cycle and mobile phone. On the night intervening 26th and 27th July, 2021 Ashfaq, the co-accused, had caused damage to the motor-cycle of

the deceased and thereupon the deceased had narrated the said fact to the first informant.

b] On 29th July, 2021 the co-accused Ashfaq accosted the deceased near Shafikarana, Subhan Singh Road, Malegaon. Co-accused Ashfaq was armed with a knife. He was accompanied by his friend Salman and Naeem, the co-accused. They caught hold of the deceased. When Ashfaq tried to assault the deceased by means of knife, the deceased held the knife by his hand. Thereupon Ashfaq asked Naeem to hand over the knife which the later was carrying. After Naeem gave the knife, Ashfaq assaulted the deceased by means of knife on the stomach, hands and legs.

c] Farid Ahmad saw the aforesaid incident of assault and reported the said fact to the first informant. Thereupon, the first informant lodged report to the effect that Ashfaq and the applicant, who is the brother of Ashfaq, killed the deceased.

3. Investigation commenced. Further statements of the first informant, his brother Farid and eye witnesses to the occurrence came to be recorded. Post completion of investigation, charge-sheet has been lodged.

4. The applicant has preferred this application with the

assertion that he was not at all present at the time of occurrence. Farid and the first informant had named him as one of the assailants on account of misconception. In their supplementary statements Farid and the first informant have categorically stated that the applicant was not one of the assailants. Even the alleged eye witnesses have not named the applicant.

5. I have heard Mr. Anilkumar Patil, the learned counsel for the applicant and Mr. Gaikwad, the learned APP, for the State at some length.

6. First and foremost, it is imperative to note that Raees Ahmad, the brother of the deceased lodged the first information report on the basis of narration by his brother Farid Ahmad. Evidently, the first informant was not a witness to the occurrence. In the supplementary statement recorded on 6th August, 2021, the first informant, after the CCTV footages were shown to him, stated that the footages indicated that the deceased was caught hold of by co-accused Salman and Naeem, the friend of the assailant Ashfaq. The initial blow by means of knife given by the assailant Ashfaq was thwarted by the deceased by holding knife. Thereupon, the assailant Ashfaq asked the co-accused Naeem to handover the knife,

which he was carrying, and unleashed the blows by the said knife on the stomach, hand and legs of the deceased. Even after the deceased fell down, Ashfaq gave the blows by means of knife in quick succession. Farid Ahmad who claimed to have witnessed the occurrence, also reiterated the aforesaid version in the supplementary statement recorded on 6th August, 2021.

7. I have also perused the statement of Mohd Faizan, the eye witness to the occurrence. Mohd Faizan states that on the night intervening 28th and 29th July, 2021 he noticed that a quarrel had broken out between the deceased, on the one side, and the co-accused Ashfaq, Naeem and Salman, on the other side. The co-accused were assaulting the deceased. Ashfaq assaulted the deceased by means of knife whilst co-accused Salman and Naeem had caught hold of the deceased.

8. The situation which thus obtains is that though the first informant alleged in the first information report that the applicant had killed the deceased, apparently on the basis of narration by his another brother Farid, yet in the supplementary statement both the first informant and his brother Farid have not attributed the said role to the applicant. In fact, the very presence of the applicant at

the scene of occurrence prima facie does not seem to have been made out. The eye witnesses to the occurrence simply do not advert to the presence of the applicant at the scene of occurrence much less the role of assault.

9. The learned APP endeavoured to salvage the position by taking the Court through the memorandum of disclosure statement made by the co-accused and the statement of the mother of the deceased and other witnesses, who had either seen the CCTV footages or were informed about the occurrence by other witnesses. I am afraid none of these is, prima facie, of any assistance in roping in the applicant as one of the assailants.

10. The conspectus of aforesaid consideration is that a strong prima facie case is made out to exercise the discretion in favour of the applicant. Hence, I am persuaded to release the applicant on bail.

Hence, the following order.

ORDER

- 1] The application stands allowed.
- 2] The applicant Mohammad Raza Rahees Ahmed be released on

bail in C.R. No. 51 of 2021 registered with Ayesha Nagar police station, Malegaon on furnishing a P.R. Bond in the sum of Rs. 30,000/- with one or two sureties in the like amount, to the satisfaction of learned Session Judge.

3] The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to any of the prosecution witnesses.

4] The applicant shall given his permanent address and contact details to the Inspector of Police, Ayesha Nagar police station and intimate change, if any.

5] The applicant shall mark his presence at Ayesha Nagar police station on the first Monday of every alternate month in between 10 am to 1 pm for a period of one year or till framing of charge whichever is earlier.

6] The applicant shall regularly attend the proceedings before the jurisdictional Court.

7] By way of abundant caution, it is clarified that the observations made hereinabove are confined to the consideration of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the co-accused.

(N. J. JAMADAR, J.)