

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

BAIL APPLICATION NO. 264 OF 2021

Farukh Gulab Shah .. Applicant
v/s.
The State of Maharashtra .. Respondent.

Mr. Raviraj R. Paramane, for the Applicant.
Mr. M. G. Patil, APP for the Respondent-State.
Ms. Mukta Phadtare, API, Shantinagar Police Station, Bhiwandi, present.

CORAM: SARANG V. KOTWAL, J.
DATED : 6th JANUARY, 2022.
(THROUGH VIDEO CONFERENCING)

PC:-

The Applicant is seeking his release on bail in connection with CR No. 152 of 2019 dated 11th February, 2019 registered with Shantinagar Police Station. Investigation is over and the sections applied today are Sections 302, 324, 141, 142, 143 and 144 of Indian Penal Code.

2 The Applicant was arrested on 23rd February, 2019 and since then he is in custody. The investigation is over and the charge-sheet is filed.

3 The prosecution case is that, the deceased Riyaz alias Bablu had some altercation with one Fakir Mohammed Khan. Riyaz had found Fakir Khan's mobile and he wanted some money to return it. During quarrel, Riyaz gave blow with the knife on Fakir Mohammed Khan. The Applicant and other accused were his employees. It is alleged that Applicant came with bamboo. Riyaz was allegedly beaten by the Applicant and others. The Applicant then took away Riyaz on motor-cycle. Riyaz's

relatives took him to different hospitals for treatment. Record shows that Riyaz succumbed to his injuries on 22nd February, 2019.

4 The FIR was lodged by one Ayaz S. Shaikh on 11th February, 2019.

5 Heard Mr. Raviraj Paramane, learned Counsel for the Applicant and Mr. M. G. Patil, learned APP for the Respondent-State.

6 Learned Counsel for the Applicant submitted that the deceased had not died immediately because of the assault committed by accused. There was no intention to commit his murder.

7 Learned APP opposed this application. He submitted that there is recovery of the bamboo at the instance of the Applicant. The deceased could have been saved if he was offered immediate treatment but he was taken to an isolated place. Therefore, the Applicant is directly responsible. Learned APP further submitted that considering the specific role attributed to the Applicant, application should be rejected.

8 I have considered these submissions. The FIR is lodged by Ayaz Shaikh. He was not an eye witness. He has stated that on 4th February, 2019 at about 9.00 a.m. they received a phone call that Riyaz had suffered injury and was seen under the building. The informant and Riyaz's brother went to the spot at 10.30 a.m. and Riyaz was taken to hospital. There were several injuries on chest, eyes and both the arms. According to the FIR, first he was taken to a hospital at Bhiwandi and then was taken to Sion hospital. He was admitted in the hospital for two days and then he was discharged on 6th February, 2019. On 7th February, 2019 again Riyaz started feeling uncomfortable. Therefore, he was again admitted to Sion hospital and on 11th February, 2019 this FIR was lodged.

Riyaz succumbed injuries on 22nd February, 2019.

9 The charge-sheet shows that there is only one eye witness to the incident. His name was Pintya Kambekar. He stated that on 3rd February, 2019, there was quarrel between Fakir Mohammed Khan and Riyaz. Riyaz assaulted Mohammed with knife. Mohammed called for help. At that time, Applicant and other workers immediately came there. Riyaz was assaulted. Applicant assaulted with a bamboo. After that, Riyaz was taken to some other place on motor-cycle by the Applicant and the co-accused. His statement is recorded under Section 164 of Cr. P. C. However, in that statement, he has stated that all accused assaulted Riyaz with wooden sticks and belt and that he was beaten through out the night.

10 The injury certificate of Riyaz issued by Sion hospital regarding the examination conducted on 5th February, 2019 shows two injuries. First injury was multiple focal abrasion to both arms and the second injury was periorbital edema on the right eye as there was fracture of left zygomatic arch. The post mortem shows the cause of death as cerebral edema with pneumonia due to head injuries.

11 Thus, it appears that deceased died because of the head injury. Incident was not a result of pre-planned murder. It does not appear that the Applicant had intention or knowledge for causing such injury which would result in death. In this view of the matter, there is a possibility that the offence may not fall within the meaning of '*murder*' but could be a lesser offence.

12 The Applicant is already in custody since February, 2019. The charge-sheet is already filed. There are no criminal antecedents.

Therefore, he deserves to be released on bail.

13 Hence, the following order:-

- (i) The Applicant is directed to be released on bail in connection with C.R. No.152 of 2019 registered with Shantinagar Police Station, Mumbai, 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 as and when called and shall co-operate with investigation.
- (iii) The Application stands disposed of accordingly.

(SARANG V. KOTWAL,J.)