

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1395 OF 2020

Arman Akbar Qureshi ...Applicant

vs.

The State of Maharashtra ...Respondent

Mr. Shirish Gupte, Senior Advocate i/b. Mr. Ganesh Bhujbal, for the Applicant.

Mr. A.A. Palkar, APP, for the State.

CORAM : N. J. JAMADAR, J.
ORDER RESERVED ON : JULY 08, 2022
ORDER PRONOUNCED ON : AUGUST 19, 2022

P.C.:

1. The applicant/accused No. 5, who is arraigned for the offences punishable under sections 109, 302 read with 34, 143, 147, 148 and 149 of Indian Penal Code, 1860 (the Penal Code); section 4 read with 25 of Arms Act, 1959 and section 37(1)(3) read with 135 of Maharashtra Police Act, 1951 along with five co-accused, has preferred this application to enlarge him on bail.

2. The gravamen of indictment runs as under:-

a] Mainuddin Qureshi (A/6) has a daughter Simroz and two sons Arbaz Qureshi (A/1) and Faraz Qureshi (A/2). Simroz was in a relationship with Sultan Sayyed (the deceased). Mainuddin Qureshi (A/6) and his family members did not approve the said liaison. Yet,

after Simroz attained majority on 23rd August, 2018, she eloped with the deceased and solemnized marriage on 28th August, 2018. After Simroz eloped, Mainuddin Qureshi (A/6), Arbaz Qureshi (A/1), Faraz Qureshi (A/2) and their relatives had pelted stones on the house of the deceased and threatened to cut Simroz and the deceased to pieces and eliminate the parents of the deceased. Prior to the occurrence also, Arbaz Qureshi (A/1) and Faraz Qureshi (A/2) had accosted the deceased and threatened to kill him.

b] The deceased was running a coconut water stall at M.G. Road, Pune. On 23rd March, 2019 at about 7.30 p.m. while the deceased was at the said stall, 4-5 persons allegedly came running. Arbaz Qureshi (A/1) started to abuse and assault the deceased. Arbaz Qureshi (A/1) was armed with a big knife (Rambo). As Arbaz Qureshi (A/1) unleashed blows by means of knife, the deceased attempted to run away to save himself. However, the deceased collided with the stall of Sahil Dindore and fell down. The deceased got up and started to run towards lime juice cart. Faraz Qureshi (A/2) and Junaid Qureshi (A/4) allegedly caught hold of the deceased. Mohamed Patel (A/3) gave blow by means of soda water bottle on the head of the deceased. The deceased fell down and again got back of his feet and started to run. One of the assailants pushed the deceased towards Arbaz Qureshi (A/1). Thereafter, Arbaz Qureshi

(A/1) gave blow by means of knife on the hands, legs, neck and finally stabbed in the stomach. The deceased fell down in a pool of blood. Thereafter, the deceased was shifted to Sasoon hospital. He was declared dead.

c] Upon being informed by Aga Amir Khan, who was running a lime juice cart, near the stall of the deceased, Abdul Rehman Sayyed (first informant), the uncle of the deceased, initially approached Sasoon hospital and after being further apprised about the nature of assault and the role of the assailants, the first informant lodged report with Lakshar police station, Pune.

3. The accused, including the applicant and Mainuddin Qureshi (A/6), who allegedly instigated the assailants to eliminate the deceased, came to be arrested. Investigation revealed that the applicant had also accompanied the assailants and was the member of unlawful assembly in prosecution of common object of which the murder of the deceased was committed. Post completion of investigation, charge-sheet has been lodged for the aforesaid offences.

4. The applicant has preferred this application asserting that there is no material to connect him with the alleged offence. He was

not named as one of the persons, who allegedly assaulted the deceased either by the first informant or the alleged eye witnesses. Nor the applicant was named as one of the members of the unlawful assembly. Nothing has been recovered at the instance of the applicant so as to connect the applicant with the crime. Thus, the applicant deserves to be enlarged on bail.

5. I have heard Mr. Shirish Gupte, the learned senior counsel for the applicant and Mr. Palkar, learned APP, for the State at some length. With the assistance of the learned counsels for the parties, I have perused the report under section 173 of Code of Criminal Procedure, 1973 and the documents annexed with it, including the statements of the witnesses recorded under section 164 of the Code and the memorandum of T. I. Parade.

6. Mr. Gupte, urged that there is no material to show that the applicant was one of the alleged assailants. None of the eye witnesses has attributed the role of assault to the applicant. In fact, the murderous assault was allegedly mounted by Arbaz Qureshi (A/1). The witnesses have even not named the applicant as the person who assaulted the deceased by means of soda water bottle or pushed him towards Arbaz Qureshi (A/1), the principal assailant.

Therefore, having regard to almost three years of incarceration, further detention of the applicant as an undertrial prisoner, according to Mr. Gupte, is not warranted.

7. Mr. Palkar, learned APP, on the other hand, stoutly submitted that there is clear evidence to show the presence of applicant before, at the time of, and post, the occurrence. A strong reliance was placed on the statement of Aaga Amir Khan and Bilal Damra, the alleged eye witnesses, who identified the applicant as one of the members of unlawful assembly in the T.I. parade conducted on 29th July, 2019. Learned APP would further urge that CCTV footages unmistakably indicate that the applicant was one of the pillion riders on the motor-cycle driven by Faraz Qureshi (A/2), when they had come to mount the assault. Furthermore, the applicant was also seen in one of the CCTV footages leaving the scene of occurrence, after the deceased was done to death. As the offences have been committed in prosecution of the common object of unlawful assembly, it is not necessary that there ought to be overt act attributable to each member of unlawful assembly. Mr. Palkar would further urge that the context of the matter which is an instance of “Honour Killing” cannot be lost sight of. Thus, according to Mr. Palkar the applicant does not deserve the exercise of

discretion.

8. To start with, the first informant while lodging report did not name the applicant as one of the assailants or the member of unlawful assembly. In the supplementary statement recorded on 28th March, 2019, after noticing the CCTV footages, the first informant identified the applicant as one of the two pillion riders on the motor-cycle driven by Faraz Qureshi (A/2). In any event, the omission to name the applicant by the first informant does not detract materially from the prosecution as it was based on the narration by Aaga Amir Khan and Amir Hamzya Qureshi, the friends of the deceased. Prima facie, the complicity of the applicant is required to be appreciated on the basis of narration of the occurrence by the alleged eye witnesses, especially the role attributed to the applicant.

9. Aaga Amir Khan stated that on the evening of occurrence 4-5 persons came to the stall of the deceased. One of them was armed with knife. He started to assault the deceased. When the deceased started to run to save his life, two of them picked up soda water bottles and gave blows on the head of the deceased. Yet, the deceased attempted to run away. The assailant armed with knife

gave blow on the hand of the deceased. While the deceased tried to run away, one of those persons pushed the deceased towards the assailant, armed with chopper, and the later gave fatal blows. Aaga Amir Khan, did not name the assailants.

10. The prosecution alleges that the applicant was one of the two persons who pushed the deceased towards Arbaz Qureshi (A/1).

11. Bilal Abdul Ajiz Damra narrated identical version before the police. In the T. I. parade both Aaga Amir Khan and Bilal Damra identified the applicant and Mainuddin Qureshi (A/6). However, the identification does not seem to be with reference to the aforesaid act of pushing the deceased towards the principal assailant.

12. Anna Akhade, another eye witness, stated that 4 persons came to the stall of the deceased. Anna Akhade does not state about any of those persons having pushed the deceased towards the principal assailant. Nikhil Ganesh, another eye witness states that 4-5 boys had accosted the deceased. After narrating the occurrence as stated by the above eye witnesses, Nikhil Ganesh attributed the role of pushing the deceased towards Arbaz Qureshi (A/1) to Junaid Qureshi (A/4). Nikhil Ganesh claimed that when he tried to intervene, Arbaz Qureshi (A/1) threatened to harm him as well.

13. Amir Hamzya Qureshi, another eye witness, does not state about the assailants having pushed the deceased towards the principal assailant. Sahil Dindore, who ran the cloth stall near the stall of the deceased, and with whose stall the deceased initially collided with and fell down, also attributes the role of pushing the deceased towards Arbaz Qureshi (A/1) to Junaid Qureshi (A/4).

14. In the statement recorded under section 164 of the Code, Nikhil Ganesh specifically named 4 assailants namely Arbaz Qureshi (A/1), Faraz Qureshi (A/2), Mohamed Patel (A/3) and Junaid Qureshi (A/4) as he had known them from before as the residents of the same locality. In the statement recorded under section 164 of the Code also Nikhil Ganesh categorically asserted that Mohammad Patel (A/3) gave a blow by means of soda water bottle on the head of the deceased and Junaid Qureshi (A/4) pushed the deceased towards Arbaz Qureshi (A/1). Sahil Dindore also named Junaid Qureshi (A/4) and Mohmmad Patel (A/3) as the assailants apart from Arbaz Qureshi (A/1) and Faraz Qureshi (A/2). According to Sahil Dindore, Mohammad Patel (A/3) had given blow by means of soda water bottle on the head of the deceased and Junaid Qureshi (A/4) caught hold of him.

15. In the light of the aforesaid statements of the eye witnesses to

the occurrence, prima facie, it appears that none of the prosecution witnesses has attributed any overt act to the applicant. All are in unison on the point that Arbaz Qureshi (A/1) gave the fatal blows by means of knife. When the deceased attempted to run away, he was allegedly assaulted by means of soda water bottles by two of the assailants. However, the witnesses have categorically stated that it was Mohamad Patel (A/3) who gave blow by means of soda water bottle on the head of the deceased. The prosecution has made an endeavour to attribute the role of having pushed the deceased towards Arbaz Qureshi (A/1), to applicant and co-accused Junaid Qureshi (A/4).

16. A meaningful reading of the statements of the aforesaid witnesses, prima facie, indicates that the said role has been specifically attributed to co-accused Junaid Qureshi (A/4). The situation which thus obtains is that there is no overt act attributed to the applicant. Plainly it is not the case of the prosecution that the applicant was the assailant. In this backdrop, the evidence of identification of the applicant by two of the eye witnesses Aaga Amir Khan and Bilal Damra would warrant appraised, especially when, on the one hand, there are witnesses who have attributed the said role to Junaid Qureshi (A/4) specifically and, on the other

hand, the identification by the witnesses is not with reference to the said role.

17. That leaves the circumstance of the applicant having been captured in the CCTV footages. Prima facie, the CCTV footages, show the presence of the applicant with the co-accused. It is trite law that when the offence is committed in prosecution of common object of an unlawful assembly, the prosecution is not enjoined to establish the overt act of each of the members of the unlawful assembly. The question which is of critical significance is whether the presence of a member to whom no overt act is attributed, was animated with the same common object ?

18. In the facts of the case there is an element of uncertainty as to whether the applicant was with the assailants at the time of the actual assault. Two of the witnesses i.e. Nikhil Ganesh and Sahil Dindore whose statements have been recorded under section 164 of the Code claimed to have known the assailants from before, yet, the applicant was not named.

19. In the aforesaid circumstances, in my view, a prima facie case for grant of bail is made out. The material on record does not

sustain the overt act attributed to the applicant and, in any event, the role attributed to the applicant is materially distinct from the one attributed to rest of the assailants. Moreover, the investigation is complete for all intent and purpose. The applicant has been in custody for more than three years. Having regard to the nature of the occurrence and the number of witnesses, the conclusion of trial may require significant time. No antecedents are attributed to the applicant. He seems to have roots in society. Thus, I am persuaded to exercise the discretion in favour of the applicant.

Hence, the following order.

ORDER

- 1] The application stands allowed.
- 2] The applicant Arman Akbar Qureshi be released on bail in connection with C.R. No. 189 of 2019 registered with Lakshar police station, Pune 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 the learned Session Judge, Pune.
- 3] The applicant shall furnish his permanent address and contact details to the Inspector of Police, Lakshar police station, Pune within a period of one week of his release from prison.
- 4] The applicant shall mark his presence at Lakshar police

station on first Monday of every alternate month in between 10 am to 12 noon for a period of one year or till conclusion of the trial, whichever is earlier.

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

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.

All concerned to act on an authenticated copy of this order.

(N. J. JAMADAR, J.)