

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

BAIL APPLICATION NO. 2939 OF 2021

Rafiq Bablu Shaikh ...Applicant

Versus

The State of Maharashtra ...Respondent

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Mr. Kuldeep Patil, i/b Saili Dhuru, for the Applicant.

Ms. M. R. Tidke, APP for the State/Respondent.

Mr. R. R. Londhe, ASI, Sanjay Nagar Police Station, Sangli,
present.

CORAM: N. J. JAMADAR, J.

RESERVED ON: 24th JUNE, 2022

PRONOUNCED ON: 29th JUNE, 2022

ORDER:-

1. This is an application to enlarge the applicant –
accused no.2 on bail.

2. The applicant is arraigned in CR No.112/2019,
registered with Sanjay Nagar Police Station, Sangli, for the
offences punishable under Sections 302, 120B, 504 and 506
read with 34 of the Indian Penal Code, 1860, (“the Penal
Code”) and Section 4 read with Section 27 of the Arms Act,
1959, for having committed, *inter alia*, murder of Subhash
Buwa (the deceased).

3. The indictment against the applicant runs as under:

Preetam Buwa (the first informant) is the son of deceased Subhash. They were residing at Nirankar Colony, Chinmay Park, Sangli. The co-accused nos.3 to 5 Aamir Almel, Usman @ Bablu Almel and Saddamhussain Almel reside in the same colony. Rafiq Shaikh, the applicant – accused no.2, is the brother-in-law of co-accused Aamir. Co-accused no.1 Imran Shaikh is the friend of the applicant. The first informant alleged that the applicant and co-accused no.1 Imran habitually indulged in commission of the offences against body and property and have, thus, created a reign of terror in Sanjay Nagar area.

4. On 3rd June, 2019, co-accused Aamir drove his motorcycle in a reckless manner and upon being questioned by the deceased, threatened the deceased. On 7th June, 2019, the front and rear windshield of the first informant's car were broken. When the deceased and the first informant approached Sanjay Nagar Police Station, co-accused Aamir and Bablu came thereat and requested the deceased not to lodge report. At the request of the co-accused and considering the reign of terror of the applicant and co-accused no.1, the deceased returned from police station without lodging any report.

5. On 8th June, 2019, at about 8.00 pm. the applicant allegedly called the deceased on the latter's cellphone, repeatedly. The deceased informed the first informant that the applicant was calling him at HUDCO Colony to resolve the dispute and the co-accused Imran Shaikh was also stated to be present thereat. The deceased proceeded to HUDCO Colony on a motorcycle. With a view to ensure that there is no further confrontation, the applicant and his brother Shriniwas also proceeded towards HUDCO Colony. When they reached HUDCO Colony, they found that people were running helter-skelter. The applicant was armed with a sharp axe like weapon. Co-accused was Imran armed with a big scythe. They were raising shouts that if anyone dared to question their authority, he would meet the same fate like the deceased. The first informant found that the deceased was lying in a pool of blood near an auto-rickshaw. Blood was oozing from the head and stomach of the deceased. Nobody came to assist the first informant and his brother in shifting the deceased to hospital as they were scared of the applicant and co-accused no.1. After the rest of the family members arrived thereat, the deceased was shifted to Civil Hospital, Sangli, where he was declared dead.

6. The applicant and co-accused were apprehended whilst they were allegedly hiding themselves near Maruti temple, on Hotel Palvi road. The weapons of offences were found in possession of the applicant and co-accused no.1 and those weapons were seized. Post completion of investigation, charge-sheet has been lodged.

7. I have heard Mr. Patil, the learned Counsel for the applicant and Ms. Tidke, the learned APP for the State, at some length. The learned Counsels have taken me through the report under Section 173 of the Code of Criminal Procedure, 1973.

8. Mr. Patil, the learned Counsel for the applicant submitted that the claim of the first informant that he had seen the applicant and co-accused armed with deadly weapons, immediately after the deceased was assaulted by the applicant and co-accused no.1, does not deserve implicit reliance. The statement of Shrinivas Buwa, the brother of the first informant proceeds on identical lines. In contrast, according to Mr. Patil, the deceased was done to death at a busy place. A number of persons were allegedly present, and ran helter-skelter. However, no statement of any independent witness has been recorded. Thus, there is a serious flaw in

the prosecution case in its endeavour to establish the nexus between the applicant and the crime.

9. In opposition to this, the learned APP submitted that there is adequate material to sustain the complicity of the applicant. Moreover, having regard to the antecedents of the applicant which indicate that as many as seven serious offences have been registered against the applicant, the Court may not be persuaded to exercise the discretion in favour of the applicant as there is a strong apprehension of indulging in identical violent acts, tampering with evidence and threatening the witnesses.

10. Ocular account, it seems, primarily consists of the statements of Preetam Buwa and Shriniwas Buwa, the sons of the deceased. In this backdrop, the prayer for bail is required to be appreciated in the context of the nature of occurrence and the antecedents of the applicant. The reluctance of the general public to come forward, when a ghastly crime is committed, at a busy place, is not uncommon. It is judicially recognized that people generally keep themselves away from the victim as well as vigilante.

11. At this juncture, it is imperative to note that the autopsy surgeon opined that the deceased died on account of

hemorrhagic shock due to multiple stab injuries. The Autopsy Surgeon noted as many as 14 injuries. There were numerous incised wounds on the vital parts of the body of the deceased and stab wounds on the abdomen of the deceased. It seems the deceased was assaulted by means of sharp weapons with ferocity.

12. The endeavour on the part of the applicant to cast a doubt over the presence of the applicant and Shriniwas, his brother, at the scene of occurrence is required to be appreciated in the light of the fact that they have stated that the applicant had called deceased at HUDCO Colony to resolve the dispute. In order to avoid further confrontation, they had followed the deceased. In the light of the sequence of the events narrated by them, the claim of the first informant and Shriniwas, cannot be completely brushed aside.

13. In addition, there is circumstantial evidence in the nature of the blood stains of human origin having been found on the weapon of assault and the clothes on the person of the applicant.

14. The fact that as many as seven offences have been registered against the applicant cannot be said to be

inconsequential or immaterial. The antecedents of the applicant deserve cognizance in the light of the contention of the first informant that the applicant and co-accused no.1 had created a reign of terror in Sanjay Nagar area. Furthermore, the fact that the initial quarrel was between the deceased and co-accused nos.3 to 5 cannot be lost sight of. The applicant allegedly came in the frame as the co-accused no.3 is the brother-in-law of the applicant.

15. In the totality of the circumstances, the apprehension on the part of the prosecution appears well-founded. The release of the applicant on bail, at this stage, is fraught with a serious risk of tampering with evidence as well as fleeing away from justice.

16. For the foregoing reasons, I am not inclined to exercise the discretion in favour of the applicant.

17. Hence, the following order:

: O R D E R :

(i) The application stands rejected.

(ii) 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.]