

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1542 OF 2020

Sharukh Farid Khan @ Papa .. Applicant

Versus

The State of Maharashtra .. Respondent

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Mr.Mahesh Vishwakarma with Mr.Amol Khillare, Ms.Janhavi Khare i/b Vishwakarma & Associates for the Applicant.

Ms.A.A.Takalkar, A.P.P. for the State/Respondent.

Mr.D.B.Kadbhane attached to Shivaji Nagar Police Station, present.

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CORAM: BHARATI DANGRE, J.

DATED : 06th JULY, 2022

P.C:-

1. By the present application, the applicant seeks his release on bail, on being charged for the offences punishable under Sections 302, 307 read with Section 34 of the IPC and under Sections 4, 25 and 27 of the Arms Act. The applicant came to be arrested on 26/07/2019 and since then he remain incarcerated.

2. The C.R. came to be registered on a complaint filed by one Mohd. Shakil @ Aashu Mohd.Idris Shaikh, who reported that he is a resident of the address given in the complaint and is engaged as an Electrician. He is acquainted with the people residing in the locality and know Faiz and Dilawar, who are without any occupation and hence indulge themselves in extortion by carrying weapons.

3. As per the complainant, on 22/07/2019, when he and his friend Asif Mohd. Khan @ Shibu were proceeding towards their houses, they noticed Faiz and Dilawar with iron rods in their hands. There were two other persons holding weapons. Upon noticing them, his friend Shibu started videographing them, which irked them and it is alleged by him that they rushed towards them by saying that the videographed portion should be deleted. It is alleged that they started assaulting them by swords and iron rods. Faiz is alleged to have assaulted Shibu by a sword and an iron rod on his face, neck and stomach. On raising hue and cry, the local people assembled there, but they were also threatened. Resultantly, they ran away from the spot and took shelter in their respective houses by closing the windows and doors. By threatening the people in the locality with dire consequences, the assailants left the spot.

The complainant as well as his friend Shibu came to be admitted in the hospital and an A.D.No.95 of 2019 came to be registered by the Assistant Police Inspector, who had noticed Asif Gaus @ Shibu lying in the injured condition and he was taken to the Rajawadi Hospital, but he was declared dead. On being informed that the complainant is also injured, even his statement was also recorded as above.

4. The supplementary statement of the complainant came to be recorded on 25/07/2019, where he makes reference to the two unknown persons, who were present with Dilawar and Faiz alongwith weapons like swords and iron rods. In the supplementary statement, it is stated that on the video being recorded, Faiz and his associates insisted Shibu to delete the video and, therefore, a verbal altercation took place. However, putting an end to this, they returned to their respective homes and once again noticed, all the persons on road. They stopped Shibu and insisted that the video should be deleted and on being refused, Faiz assaulted Shibu with a sword in his head and he fell to the ground. The complainant himself was assaulted by Dilawar in his head by means of iron rod and other two unknown persons, who were present, participated in the assault mounted by the two assailants and when they fell

on the ground, they left the spot. In his supplementary statement, he disclosed the names of the two persons in the video as Altaf @ Totla @ Tiwari and Sharukh @ Papa (present applicant).

5. On the basis of the supplementary statement of the complainant, the applicant was apprehended, as he was identified by him in the video and his name being disclosed by his friends.

Shibu, the deceased, succumbed to the injuries sustained by him and the postmortem report ascribe the cause of death to be "hemorrhage and shock due to multiple chop injuries". As far as the complainant is concerned, he sustained three injuries and the grievous injury being vertical CLW (20 X 2 X 1 cm) on right parietal region. Apart from this, he suffered two CLWs on left and right leg, which are simple injuries. The injury report mention of a fracture in right frontal and parietal bone.

6. During the course of investigation, statements of several witnesses are recorded and compiled in the charge-sheet. One Mohd.Amanat Mohd. Hayat Ansari, who was accompanying Shibu on his Aactiva, has stated that when they crossed a nala at Mitti, they saw five persons with weapons in their hands

and Shibu asked them to stop the vehicle and inquired with them as to where they were proceeding. He also started shooting their video in his mobile. As per Mohd.Amanat, they got agitated and asked Shibu to delete the video. However, he did not delete the video and they returned to Shamshad's house. Thereafter, Shibu and Aashu/the complainant, left for their home on Aactiva, whereas the witness stayed with Shamdhad. Thereafter, the incident of assault on Shibu and Aashu took place, which he had not witnessed.

Another witness, who also accompanied them on Aactiva, also speaks of five persons being present on Mitti Road with swords and iron rods in their hands. He corroborate the version of Mohd.Ansari.

7. The statement of Sameer Mohd.Idris Shaikh, brother of the complainant, is also compiled in the charge-sheet, where he specifically states that Shibu had recorded the video in his mobile and, therefore, the assailants had assaulted him. The video recorded by Shibu was made viral and was received by him where his brother Aashu, Shibu as well as Shehzad and Amanat are seen riding on the bike and in the video, five other persons armed with weapon were also seen. The abuses are also heard in the said video. This video was handed over by

the witness to the police and the clipping was transferred to the computer and it was converted into a C.D. and compiled in the charge-sheet.

8. The learned counsel for the applicant would vehemently submit that there is no role assigned to the applicant, as the complainant had made reference to two unknown persons. However, from the material compiled in the charge-sheet it is apparent that the videography was done by Shibu, which covered five persons armed with weapons and the complainant in his supplementary statement, has stated that the applicant was one of the persons, who was present on the spot when the videography was done. The applicant is a resident of the same locality and the friends of the complainant in the locality, by looking at the video where the persons were seen armed with weapons, have identified the present applicant.

I am also unable to accept the submission of the learned counsel that no overt act is attributed to the present applicant, as the statements of the witnesses which form part of the charge-sheet reveal that even the unknown persons, who were present, have also assaulted the complainant and the deceased and even as per the statement of the complainant, the two persons also assaulted them.

As the complicity of the applicant in the said C.R. has clearly surfaced through the charge-sheet, he do not deserve his release on bail.

The application is, therefore, rejected.

(SMT. BHARATI DANGRE, J.)