

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

CRIMINAL BAIL APPLICATION NO. 3862 OF 2021

Shaukat Mehboob Shaikh

.. Applicant

Vs.

The State Of Maharashtra

.. Respondent

...

Mr. N.M. Nadar, Advocate for Applicant.

Smt. A. A. Takalkar, A.P.P. for the State-Respondent.

...

**CORAM : SARANG V. KOTWAL
DATE : 07TH JANUARY, 2022
(Through Video Conferencing)**

PC.

1. The applicant is seeking his release on bail in connection with C.R. No. I-29 of 2019 dated 26th January, 2019 registered with Rabodi Police Station, District Thane for the offences punishable under Sections 302, 384, 394, 143, 147, 148, 149, 323, 504 of the Indian Penal Code (for short "IPC") and Section 37 (1) and 135 of the Maharashtra Police Act.

2. The applicant was arrested on 26th January 2019 and since then he is in custody. The investigation is over and the charge-sheet is already filed. All other co-accused are already released on bail.

3. The prosecution case is that in the FIR lodged by one Sonu Jaiswal, he has stated that on 26th January, 2019 at about 1.30 hours, he was going to Vashi market. He was having substantial amount with him. At that time one of the accused Amin Shaikh stopped him and forcibly removed an amount of Rs. 40,000/-. The informant went home and told the incident to all the family members, including his father Pradip Jaiswal. They met the main accused Amin Shaikh. They requested him to return the amount. He refused and made phone call to his associates, who came there, including the applicant. It is alleged that all of them started beating the informant and his family members. The applicant removed knife and tried to give a blow, but the elder brother of the informant pushed him and the knife fell down. After that, the accused assaulted the informant and his father Pradip Jaiswal by fist and kick blows on his chest, stomach, face etc. Other accused also assaulted. It is the case of the informant that family members were pleading to the assailants that as Pradip had heart ailments, he should not be assaulted. After the assault, informant's father Pradip was taken to the hospital.

4. Learned counsel for the applicant submitted that the role attributed to the accused is the same and all the other accused are released on bail. He submitted that the applicant be set at liberty on the ground of parity. He further submitted that

though the applicant had carried knife, it was not used.

5. Learned APP opposed this application. He submits that the statement of other family member was recorded who told the assailants about the heart ailment of the deceased but they continued assaulting him. She submits that there is recovery of knife at the instance of the applicant.

6. I have considered these submissions. The FIR is supported by statements of the eye witnesses i.e. informant's father, Suresh, mother Prema and sister Nisha. Their statements are consistent. There is sufficient evidence to show that the father of informant was assaulted by the applicant and others by fist and kick blows. However, the fact remained that the applicant has not used the knife. The post-mortem report shows that there is abrasion on hand and shoulder and there was one contusion over parieto-temporal region. Cause of death is mentioned due to head injury with acute coronary syndrome.

7. There is no evidence to show as to who had caused that head injury. The discussion in order dated 15th September, 2021 passed in Criminal Bail Application No. 1111 of 2021 in the case of co-accused Amin Shaikh granting bail can be applied to the present applicant. The applicant had no direct enmity with the deceased to cause assault. The deceased was not the only target but all the family members were assaulted. Requisite intention

and knowledge to commit murder are missing. At this stage, sufficient case is made out for grant of bail on the basis of parity to the present applicant. Hence, the following order:

ORDER

- (i) In connection with C.R.No. I-29 of 2019 registered at Rabodi police station, District Thane the applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two local solvent sureties in the like amount.
- (ii) The Applicant shall attend the concerned trial court on every date of trial unless prevented by a reasonable cause.
- (iii) Application stands disposed of accordingly.

PRAVIN
DASHARATH
PANDIT

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PRAVIN DASHARATH
PANDIT
Date: 2022.01.11
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(SARANG V. KOTWAL J.)