

**IO.N THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 1243 OF 2022

Mohammed Irshad Shaikh @ Raju ...Applicant

vs.

The State of Maharashtra ...Respondent

Mr. Shadab Khopekar - Advocate for the Applicant

Mr. H. J. Dedhia - APP for the Respondent-State

API Rajendra Chandankar – Kashmirira Police Station

CORAM : S. M. MODAK, J.

DATE : 04th JULY, 2023

P. C. :-

1. Heard learned Advocate for the Applicant and learned APP. Investigating officer is present.

2. The name of the deceased is one Shubham Bhuwad, his father Shantaram Bhuwad has lodged the complaint with Kashmirira Police Station on 30/08/2021. He is not eye witness to the incident. He was told by his elder son Siddhesh Bhuwad that deceased was admitted in Tunga hospital. When he went there, the doctors have declared Shubham as dead. When he inquired with friend Ankit, he has disclosed about two incidents. One is about the accident in between two motor cycles. One was driven by Tabrej Sayyed and

whereas another was driven by the accused Jatin Upadhyay. This incident took place on 29/08/2021 at about 8 p.m.. The witness Tabrej informed about this incident to witness Moin. The statement of Tabrej Sayyed is at page no. 182 and statement of Moin Sheikh is on page no. 143.

3. In order to help Tabrej, the witness Moin went to the spot. It was situated at Hatkesh Square in front of Shivsena branch. In the meantime, one Brezza car came there. There were two motor cycles also. Eight to nine persons got down. They were residents of Village Ghodbunder. Jatin Upadhyay was also there. His father Vinod Upadhyay also there. He shouted and asked who has beaten his son.

4. At the same time, Jatin instigated the other assailants by telling that the person who had worn red colour T-shirt and blue jeans was also there in the earlier incident. All the assailants including the present Applicant beaten the person who had wore red T-shirt. He was none other than the deceased. He felt unconscious. As said above, in the hospital he died. An offence is registered under Sections 302, 143, 147 and 149 of the Indian Penal Code.

5. The post mortem report says that there are injuries to his scrotum and other injuries consisting of abrasion and contusion on other parts of the body, it is mentioned in the para no. 17. There was

“Evidence of testicular contusion, however opinion reserved, viscera preserved for chemical and DNA analysis”. The said information is referred in page no. 161.

5. After considering above, I am inclined to grant him bail. Even though he was named by the witnesses and even though he has been identified in the parade, admittedly, he was not having any dispute with the deceased. So also he was not involved in the earlier vehicular accident. Not only against this Applicant but against other also there is no allegation about use of any weapon. It seems that the assailants including the present Applicant have assaulted the deceased by forming an intention at the spot itself.

6. Considering the above, I do not think it necessary to warrant his detention any more. Charge-sheet is already filed. The witnesses are from the said locality, so he can be asked to stay away from that locality. Hence following order:-

ORDER

- (i) Bail application is allowed.
- (ii) Applicant-Mohammed Irshad Shaikh @ Raju arrested in connection with C.R. No. 584 of 2021 registered with Kashimira Police Station, Thane for the offence punishable under Sections 302, 143, 147, and 149 of the Indian Penal Code, be released on bail on furnishing Personal bond and surety bond in sum of

Rs. 25,000/-.

- (iii) The Applicant is directed not to enter the territorial limits of the Kashimira Police Station till completion of the trial.
- (iv) Applicant shall not threaten the prosecution witnesses.
- (v) He is directed to furnish his alternate residence address to the concerned Police Station and concerned Court while furnishing surety.
- (vi) Applicant is directed to give attendance to the Kashimira Police Station, Thane on Second and Fourth Friday from 10.00 a.m. to 12.00 noon for one year. For that purpose, he is permitted to enter the area.
- (vii) Needless to say, violating of the condition above will make the Applicant liable for cancellation of bail after notice.

7. It is made clear that these are my *prima facie* observations and the trial Court shall decide the case on its own merits without influenced by the observations made in this order.

8. Application is disposed of in the aforesaid terms.

9. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]