

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

BAIL APPLICATION NO.1669 OF 2022

Faijal Khaja Patel ...Applicant

Versus

The State of Maharashtra ...Respondent

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Mr. Keshav Chavan for the Applicant.

Mr. S.V. Gavand, APP for Respondent-State.

Mr. Sawant, PSI, Mankhurd police station, present.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 14th MARCH, 2023.

P. C. :-

1. This is an application under Section 439 of the Cr.P.C. filed by the aforesaid Applicant, who is facing trial in Sessions Case No. 626 of 2021 pending on the file of learned Additional Sessions Judge, Greater Bombay. Said case is arising out of C.R. No.495 of 2020 registered with Mankhurd Police Station, for the offences punishable under Sections 120-B, 302, 363 and 364 r/w 34 of the IPC.

2. The aforesaid crime was registered pursuant to the FIR lodged by Smt. Firdos Hasan Ansari, sister of the deceased Mohammad Altaf. It is stated that the deceased -Mohammad Altaf was 16 years of age and was employed with co-accused Saddam Ali. It is the case of

the Complainant that said Altaf had left the house on 11/12/2020 at about 12.00 p.m. He did not return home and as such the Complainant tried to search him in the locality. The Complainant was informed that co-accused-Vasim had taken Altaf by his rikshaw and left him at some place near Shatabdi Hospital. The Complainant also showed photograph of Altaf to one lady near Shatabdi Hospital, who told her that on 11/12/2020 during afternoon hours she had seen two persons assaulting the boy in the photograph. Said lady informed the Complainant that she had intervened and asked the two persons to take Altaf in the Shatabdi Hospital but said two persons left the spot saying that they would take him to a private hospital. Thereafter on 12/12/2020 at about 7.00 p.m. some children in the locality showed a photo of a boy on his mobile phone, whose face was smeared with blood. The Complainant identified him as Altaf on the basis of cloths worn by him. Thereafter she went to the police station to lodge a report. She was taken to the Rajawadi Hospital. She identified the body of Altaf in the said hospital and thereafter lodged the FIR against two unknown persons and Vasim for causing death of Altaf.

3. In the course of the investigation the statement of one Varsha, who has vada-pav stall near Shatabdi hospital, was recorded.

She had stated that on 11/12/2020 at about 3.30 p.m. she had seen two boys assaulting one boy with wooden sticks. She has stated that one of the assailants was wearing uniform of riksha driver. She had given description of the persons assaulting the said boy. She had told the two boys not to assault the said boy. She has stated that one of the assailants told her that the boy was being assaulted because he was caught stealing. She then asked the two boys to take the injured to the Shatabdi hospital, but they told her that they would take him to a private hospital.

4. It is seen that no Identification parade was conducted though this witness had seen the assailants and given description of the assailants as well as the injured. Her statement reveals that she was informed by the police that the injured was deceased Altaf and the assailants were Saddam Ali Ahmad Kureshi and Vasim Aslam Kurishi. Suffice it to say that such information by the police is not admissible in evidence. The Investigating Officer, who is present before the Court is unable to give any explanation as to why the ID parade was not conducted.

5. Learned APP further states that the CCTV footage shows

involvement of the Applicant in assaulting the deceased Altaf. Learned APP states that no transcript of CCTV footage was prepared. None of the witnesses including the witness-Varsha were called upon to identify the assailants or the injured. No explanation is offered for such discrepancy. In the result there is no material to show the involvement of this Applicant in commission of the crime.

6. The material on record reveals that a young boy was murdered. The case was based only on circumstantial evidence. There was material to show that some of the witnesses had seen the assailants. Moreover, the incident was also captured in CCTV camera. For the reasons best known to the Investigating Officer, he did not conduct ID parade, did not prepare transcript of the CCTV footage and did not ask the witnesses to identify the assailants seen in the CCTV footage. It is only because of such shoddy investigation that the Court is constrained to release the Applicant on bail. The Commissioner of Police, Mumbai to look into the matter and make necessary entry to the service record of the Investigating Officer for lapses in the investigation in crime which is of serious nature. Registrar (Judicial) to forward copy of the order to the Commissioner of Police, Mumbai.

7. For the reasons stated above, the application is allowed on the following terms and conditions:-

- (i) The Applicant, who is facing trial in Sessions Case No. 626 of 2021 pending on the file of learned Additional Sessions Judge, Greater Bombay, shall be released on cash bail in the sum of Rs.40,000/- for a period of four weeks;
- (ii) The Applicant shall, within the said period of four weeks, furnish PR bonds in the sum of Rs.40,000/- with one or two sureties to the like amount;
- (iii) The Applicant shall report to Mankhurd Police Station on the first day of every month till framing of the charge.
- (iv) The Applicant shall keep the Investigating Officer informed of his current address and mobile contact numbers, and/or change of residence or mobile details, if any, from time to time.

8. The Application stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)