

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

CRIMINAL BAIL APPLICATION NO. 2524 OF 2023

Afzal Akhtar Shaikh

...Applicant

Versus

The State Of Maharashtra

...Respondent

....

Mr. Arun Rajput a/w Mr. Raj Pardikar, Mr. Viral Mukte, Mr. Vishnu Wani, Advocate for the Applicant.

Mr. Arfan Sait, APP for the Respondent – State.

Mr. Pandharinath Patil, PI, Crime Unit – I, Present in Person.

Mr. Ashok Sutar, PSI, Present in Person.

CORAM : PRAKASH D. NAIK, J.

DATE : 29th JANUARY, 2024.

P.C.:

1. The Applicant is arrested on 29th July, 2017, in connection with C.R. No.105 of 2017, registered with D.B. Marg Police Station, Mumbai, for the offence punishable under Section 302 r/w 34 of Indian Penal Code (for short 'IPC'). First Information Report (for short 'FIR') was registered on 16th July, 2017.

2. The FIR was lodged by Ramjilal Saini. It is alleged that the complainant is working with Abid Paper Corner, situated at Haji Kaam Chawl, Shop No.5, Grant Road, Mumbai. The owner of shop is Abid Ali. The shop owner is selling speaker spare parts in the said shop. Complainant's uncle Babulal Saini was working with Abid

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Paper Corner for about 10 years. He had complete knowledge of business. In the shop of Abid Ali and his brother Shahid Ali, Babulal used to look after the day to day affairs of the business. He had developed good relationship with businessmen visiting the shop. About one year ago, Babulal had left the shop and went to his village. About 4 months ago, Babulal returned to Mumabi and started his business at Motilal Building, Grant Road, Mumbai at rented premises. He started dealing with the speaker spare parts. Several customers of Abid Paper Corner started purchasing goods with Babulal. Hence, there were quarrels between Abid Ali, his brother Shahid Ali and Babulal. On 16th July, 2017, the complainant visited shop of Babulal Saini. The door of the shop was open. He entered into the shop. Babulal was found on the floor in pool of blood. Complainant rushed to D.B. Marg Police Station, and informed the Police about the incident. Police visited the shop. The injured was taken to Sir J.J. Hospital. He was declared dead. FIR was registered against Abid Ali and his brother Shahid Ali. On completing investigation, charge-sheet was filed.

3. This is second application for bail before this Court. The previous application was rejected vide Order dated 16th February, 2021.

4. Learned Advocate for the Applicant submitted that the Applicant is in custody from 29th July, 2017. Except the Applicant all the other Accused are on bail. The case is based on circumstantial evidence. While rejecting the previous application for bail this Court had referred to the statement of taxi driver who had allegedly identified the Applicant. However, his evidence is recorded by the trial Court. He has not supported the prosecution case. The prosecution has so far examined 16 witnesses and proposes to examine about 24 more witnesses. Trial would not be concluded immediately.

5. Learned APP submitted that the offence is of serious nature. The Applicant is the resident of Rajasthan. Prime witnesses are yet to be examined by the prosecution. If the Applicant is granted bail there is every likelihood that the Applicant may not be available for trial. One of the witness turned hostile and the other important witnesses are due for recording evidence. The incident is of contract killing. There are strong circumstances against the Applicant.

6. The Applicant is in custody for period of six and half years. The case is based on circumstantial evidence. The previous application was rejected by this Court vide Order dated 16th

February, 2021. The prosecution has examined about 16 witnesses and 24 more witnesses are yet to be examined. The taxi driver whose statement was recorded during course of investigation, was examined. He has not supported prosecution. He has not identified the Applicant. Considering the fact that the 24 more witnesses are to be examined. The trial may not get over soon.

ORDER

- i. Criminal Bail Application No.2524 of 2023 is allowed;
- ii. The Applicant is directed to be released on bail in connection with C.R. No.105 of 2017, registered with D.B. Marg Police Station, Mumbai on executing P.R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- iii. The Applicant shall report concerned Police Station once in a month on first Saturday of the month between 11:00 a.m. to 1:00 p.m. till conclusion of trial;
- iv. The Applicant shall not leave State of Maharashtra till the conclusion of trial;
- v. The Applicant shall provide the details about his place of residence to the trial Court while executing the bail bond.

vi. Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)