

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.626 OF 2015

Abdulajij Mohiddin Malbari	... Applicant
vs.	
State of Maharashtra	... Respondent

Mr. Indrajeet Joshi, for the Applicant.
Mr. J.H. Ramugade, APP for Respondent – State.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **JUNE 15, 2015**

P.C.:

. Application is moved for bail. Applicant/accused is facing charge of murder under Section 302 of the Indian Penal Code in C.R. No. 177 of 2014 registered with Laxmipuri police station, Kolhapur.

2. It is the case of the prosecution that on 13th November, 2014 in the bar owned by one Aakash Jadhav, the deceased Asif Momin and the applicant/accused Abdulajij Malbari were having drink at separate tables. At around 10.00 p.m. the deceased Asif while going, kicked the applicant/accused. Thereafter, the applicant/accused followed Asif and stabbed in his chest. The deceased fell down and died due to the stab injury. Immediately

he was arrested and since 14th November, 2014 he is behind the bars. Hence, this bail application.

3. The learned counsel for the applicant/accused has submitted that the applicant/accused is a disabled person. He was provoked by the deceased. There was verbal altercation between them before they occupied separate tables. Thereafter, while going Asif deliberately pushed the applicant/accused by giving kick and therefore the applicant/accused got provoked in spur of moment and he went out and assaulted him. He submitted that it is the case of one single stab injury and not under Section 302 of the Indian Penal Code. He submitted that the applicant/accused has been operated number of times due to his disability. He prayed for bail.

4. The learned prosecutor opposed the bail application. He submitted that there are three eye witnesses who confirmed that applicant/accused has stabbed the deceased. He further submitted that applicant/accused has bad criminal record. There are nearly six cognizable and eight non-cognizable offences were rejected against him with Laxmipuri police station, Kolhapur.

5. Perused the report submitted by the police. Though there is

record of the cognizable and non-cognizable offences against the accused, these were registered prior to year 1993 and they are of the nature of unlawful assembly, robbery and of causing simple hurt against the human body. Perused the statements of witnesses and postmortem report. *Prima facie* there is evidence that the applicant/accused has assaulted the deceased in his chest on the left side with knife. This being a single wound, the submission of the learned counsel for the applicant/accused that it can not be considered a case under Section 302 of Indian Penal Code are appreciated at this stage. Though it can be considered as a case under Section 304 Part (I) of the Indian Penal Code, yet in view of four eye witnesses, bail can not be granted at this juncture. However, considering the physical condition of the applicant/accused, he is given liberty to move bail application after eight months.

6. Hence, rejected.

(MRS.MRIDULA BHATKAR, J.)