

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 959 OF 2015

Salim Karam Husen Khan	... Applicant
Vs.	
The State of Maharashtra & Anr.	... Respondents

Mr. H.H. Ponda, Advocate for the applicant.
Mr. Arfan Sait, Advocate for the respondent no. 1/State.
Mr. D.A. Nalawade, Advocate for respondent no. 2.

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

P.C.:

This Application is moved for bail, as the applicant/accused is facing charges under sections 302 r/w. 34 of the Indian Penal Code in C.R. No. 31 of 2014 at Nani Daman Police Station which is registered on 23rd March, 2014 at the instance of one Jigneshbhai Mathurdas Joisar, brother-in-law of deceased Nilesh Shankarlal Bhanushali.

2. It is the case of the prosecution that deceased on the night of 21st March, 2014 went to Spring Bar and when he was watching the dance of bar girls, he was suddenly stabbed in the lumbar portion. Nilesh was taken to the hospital, however, he died on 23rd March, 2014. The applicant/accused was taken in custody on 2nd April, 2014. Hence, this Bail Application.

3. The learned counsel for the applicant/accused has submitted that

the complainant in the FIR gave inconsistent statement in respect of how the incident of alleged assault has taken place. Initially, it was stated that the incident has taken place on the Morai Highway Road, Vapi, as it was conveyed by the deceased to the complainant. Thereafter it was mentioned that the incident has taken place on Spring bar. The learned counsel relied on the dying declaration which was recorded at the time of admission of the deceased in the hospital regarding history of assault. He pointed out in the said admission card of Haria Rotary Hospital, clinical history given by the deceased is recorded that he was stabbed at about 11.30 p.m. on 21st March, 2014 by two unknown persons at Morai Highway Road, Vapi. The learned counsel submitted that this dying declaration if accepted, it is totally contradictory to the case of the prosecution that the incident of assault has taken in Spring Bar where the applicant/accused was present and he has assaulted the deceased. The learned counsel further submitted that it is a case of single blow and without any motive, therefore, the offence cannot be covered under section 302 of the Indian Penal Code.

4. Learned Advocate for respondent no. 2 opposed the Application. He relied on the statements of witnesses mainly the eyewitnesses who were present in Spring Bar and submitted that it is a case of murder. Though there is contradiction in the history given at the time of admission in the hospital that the assault has taken place at Morai Highway Road by two

unknown persons. Subsequently, in the statements of witnesses and the complainant, this contradiction is clarified. Learned Special Prosecutor relied on the statement of Kherajbhai and the portion in the FIR wherein the deceased has disclosed that though he had earlier stated that the incident of assault has taken at Morai Highway Road by two unknown persons, the incident in fact has occurred in the dance Bar where he has visited. The learned Prosecutor further submitted that at the time of admission, the deceased did not disclose this possibly due to embarrassment.

5. Perused FIR, postmortem notes and statement of the eye witnesses. The submissions made by the learned Prosecutor in respect of explaining the contradiction in the FIR in respect of change of place of assault is acceptable at this stage. The statements of 5 to 6 eyewitnesses disclose how the incident has taken place. The witnesses have specifically taken the name of applicant/accused. It appears that the incident has taken place suddenly in the bar. In view of this, I am not inclined to grant bail to the applicant/accused. However, the applicant/accused is in prison since 2nd April, 2014, therefore, the learned Sessions Judge to endeavour to complete the trial. If the trial is not completed within 9 months, liberty is granted to the applicant/accused to move fresh Application for bail.

(MRS.MRIDULA BHATKAR, J.)