

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1085 OF 2015

Amit Nebulal Gupta. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. Aniket Vagal, advocate for Applicant.

Mr. S.H. Yadav, APP for State.

Mr. S.P. Salunkhe, PSI, Borivali Police Station, Mumbai.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : JULY 24, 2015

P.C.:

1 Heard the learned Counsel for the applicant and the learned
APP for State. Perused papers.

2 This is an application under Section 439 of the Code of Criminal
Procedure, 1973. The applicant herein is arrested on 27/7/2014 in
Crime No. 296 of 2014 registered at Borivali Police Station for offence

punishable under Section 302, 452, 143, 147, 149 of the Indian Penal Code. The investigation is completed and charge-sheet is filed.

3 It is the case of the prosecution that on 27/7/2014 Arjun Dayashankar Mallah lodged a report at the police station alleging therein that on 13/7/2014 there was a quarrel between the present applicant and complainant's father. According to him, on that day, in the evening the applicant was consuming alcohol near their building. He had tried to stop the father of the complainant. The father of the complainant did not pay heed and the said gesture annoyed the applicant herein. It is alleged that thereafter, the applicant and his associates continued to threaten the complainant and his family members on one or the other count. On 27/7/2014 in the afternoon, the complainant had received a phone call on his cell phone from an unknown number threatening him and asking him to wait at home. At about 3.30 to 3.45 p.m. the applicant is alleged to have entered into the house of the complainant alongwith his associates. The gave fists blows on the chest of the father of the complainant. The father

of the complainant had fallen to the ground in an unconscious condition. He was taken to Apex Hospital, Borivali. Upon examination, the doctor had declared him dead.

4 On 28/7/2014 autopsy was conducted on the dead body of Dayashankar Mallah i.e. the father of the complainant. Column No. 17 shows no injury over body confirmed by cut section at places. The cause of death was reserved. The post mortem findings reveal - "Heart moderately enlarged, left ventricle hypertrophy coronaries enlarged." The CA report and the histopathological report reveal the cause of death as "death due to coronary artery disease with pulmonary oedema with Bronchopneumonitis with severe fatty liver".

5 The learned Counsel for the applicant submits that it can at the most be said that the offence may fall under Section 325 of the Indian Penal Code since the applicant was not armed with any weapon. He must have assaulted the deceased with fists without any knowledge that it may turn to be fatal. All these is a matter of

appreciation of evidence, which can be considered at the time of trial. However at this stage, upon examining C.A. report and Histopathological report it appears that it may not be a case under Section 302 of the Indian Penal Code.

6 The investigation is completed. The applicant is in jail since 27/7/2014. In this view of the matter, after going through the facts of the case and submissions advanced across the bar, this Court is inclined to grant bail.

7 However, it is made clear that the observations made hereinabove are restricted to the application under Section 439 of the Code of Criminal Procedure, 1973 and shall not be considered while deciding the application for discharge or quashing of FIR or at the time of trial. The same be decided on its own merits in accordance with law.

8 Hence, the following order is passed :

ORDER

- (i) The application is allowed.
- (ii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- and one or two sureties in the like amount.
- (iii) The applicant shall report to the concerned police station on 1st Sunday of every month till conclusion of the trial.
- (iv) The applicant shall furnish his residential address, cell number, landline number and any other details to the Investigating officer after his release on bail.

9 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)