

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1333 OF 2015

Gullu @ Gulam Hussain Rangrej. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. Shabana F. Sothe, advocate for Applicant.

Ms. S.S. Kaushik, APP for State.

Mr. A.A. Gosavi, PI, Antop Hill Police Station.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : AUGUST 6, 2015

P.C.:

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

2 This is an application under Section 439 of the Code of Criminal Procedure, 1973. The applicant herein is arrested on 10/6/2015 in Crime No. 164 of 2015 registered at Antop Hill Police Station on 15/5/1015 for offence punishable under Section 304 read with 34 of IPC. Nayana Patil, PSI attached to Antop Hill Police Station lodged a report at the police station alleging therein that on that day at about

11.45 she had received an information from Sion Hospital that one Mohammed Sharif Mohammed Hussain aged about 55 years was found unconscious in front of Sujata Hotel. He was brought to the hospital by his sister-in-law namely Rahima Mohammed Hanif Shaikh. That the complainant has recorded statement of the witnesses who had stated that the deceased was addicted to alcohol. He used to move around under the influence of alcohol. The witness had specifically stated that they have no grievance against anybody and therefore, A.D. No. 23 of 2015 was registered under Section 174 of the Code of Criminal Procedure, 1973. The autopsy was conducted on the body of the deceased. In the opinion of the medical officers, the cause of death was “shock due to cranio cerebral injury unnatural”.

3 It had transpired in the course of investigation that the deceased was lying on the footpath opposite Sujata Hotel. One Rakesh Ashok Chawdhary had informed the sister-in-law of the deceased that on 18/4/2015 at about 10 pm. Rakesh had seen the crowd assembled in

front of Sujata Hotel and that at that time, he had noticed that deceased Mohammed Sharif Mohammed Hussain was hurling abuses at the present applicant. The applicant being enraged had taken a stick from a handicapped person namely Ashok Chauhan and given some blows on the tibia of deceased. One Allabaksh has also assaulted the deceased with fists and kick blows. It is then alleged that the deceased had fallen on the road and has sustained injury to his head. The witness has stated that he got scared of the said incidence and had fled away. That Rahima had taken him to hospital. At that time, she did not know the prelude to the incident. However, her statement was recorded, on the basis of which Crime No. 164 of 2015 is registered.

4 Perused the papers of investigation. Column No. 17 of the post mortem notes indicates that the deceased had not sustained any external surface injury. The column No. 19 would show that he had sustained injury over left parietal region. There was haematoma on extra parietal region. The cause of death is shown as shock due to cranio cerebral injury(unnatural). That atleast prima facie, it cannot

be said that the deceased had died of homicidal death at the hands of the present applicant. The offence is also registered only under Section 304 read with Section 34 of the Indian Penal Code. The specific allegation is that the applicant had assaulted on tibia of the deceased. The said allegation is falsified by the post mortem notes. Prima facie, the applicant is arrested on 10/6/2015. Investigation is almost completed. In view of this, the applicant deserves grant of bail.

5 It is made clear that the observations are restricted to an application under Section 439 of Code of Criminal Procedure, 1973 only to ascertain as to whether further incarceration is warranted and the same shall not be considered for the purpose of quashing of FIR or discharge application or at the time of trial. The Trial Court shall decide the matter on its own merits uninfluenced by the above observations.

6 Hence, following order is passed :

ORDER

- (i) The application is allowed.
- (ii) The applicant be released on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- and one or two sureties in the like amount. The applicant shall report to the concerned police station on 19/8/2015 and 20/8/2015.
- (iii) The applicant be released on provisional cash bail in the sum of Rs. 25,000/- for period of four weeks within which the applicant shall furnish sureties and comply with the order.

7 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)