

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2619 OF 2014

Farook Yusuf Khan @ Guddu ... Applicant

Vs.

The State of Maharashtra ... Respondent

Mr.Jayant Bardeskar i/b Hrishikesh Mundargi for the Applicant
Mr.D.P. Adsule, APP, for Respondent – State

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **JULY 17, 2015**

P.C.:

1. The application is moved for bail as the applicant/accused is facing prosecution under sections 302, 364, 143, 146, 147, 148, 149 of the Indian Penal Code and under sections 37(1) and 135 of the Mumbai Police Act at C.R. No.22 of 2014 with Khadak police station, Pune. It is the case of the prosecution that on 4.2.2014, the co-accused Mujammil @ Murgya and his friends including the applicant/accused had parked a car on the road and they were drinking publicly and played loud music on tape recorder. They were celebrating the birthdate of the accused Mujammil @ Murgya. The deceased Rishikesh Darekar questioned them. He asked them not to shout and go away. At that time, the co-accused Murgya and the applicant/accused and his other friends were enraged. There was verbal altercation between Rishikesh others from this group. Thereafter,

the applicant/accused and the principal accused Murgya and other accused persons started assaulting him with bricks, stones and also with fist and kick blows. After some time, they took him in the car and went away. Thereafter, his dead body was found on the next day i.e., on 5.2.2014, a phone call was received by the police station about the dead body and the police found the dead body of Rishikesh. It was sent for post mortem and then the offence was registered. After recording the statements of the witnesses, it was registered against this applicant/accused.

2. The learned Counsel for the applicant/accused submitted that the applicant/accused is innocent. He was not the one who took initiative in assaulting the deceased. The prosecution could not show any motive against the deceased. The principal accused Murgya has initiated the assault and he assaulted the deceased on his head. He therefore prayed that the applicant/accused is to be granted pre-arrest bail.

3. The learned Prosecutor has opposed the application. He submitted that it is a case under section 302 of the Indian Penal Code. There are many eye witnesses, who witnessed this incident of assault. He relied on the post mortem report. He submitted that it shows nearly 14 external injuries were seen on the body of the deceased. The role attributed to the

applicant/accused is specific. He has actively participated in assaulting in Rishikesh. He further pointed out that after the assault, the applicant/accused and other accused took the half-dead Rishikesh in the car to somewhere else and thereafter his body was found the next day. He further submitted that bail to co-accused Azeem Salim Shaikh was rejected by this Court on 9.1.2015. Considering all this, he submitted that it is not a case to grant bail.

4. Perused the FIR, the statements of the eye witnesses. Prima facie, there is evidence to show that the applicant/accused was involved in the assault. He has assaulted the deceased with brick and stones in his chest, stomach and abdomen. The post mortem notes disclose that he died due to injury associated with blunt trauma in abdomen. In my view, therefore, it is not a case to grant bail. Accordingly, the bail application is rejected.

(MRS.MRIDULA BHATKAR, J.)