

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 113 OF 2017

Mohhamad Vakil Nijamuddin Khan

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Amrish R. Salunke Advocate for Applicant.

Mr. M. G. Patil APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : 17th MARCH, 2017.

PC :

1) Heard. This is an application under section 439 of Code of Criminal Procedure, 1973. Applicant herein is arrested on 24/02/2016 in crime no. 67 of 2016 registered at Mankhurd Police Station. Investigation is completed and charge-sheet is filed against the aapplicant for offence punishable under sections 302, 452 r/w 34 of the Indian Penal Code.

2) It is the case of the prosecution that on 23/02/2016 Mrs Anwari Begam Mohammad lodged a report at the police station alleging therein that her elder son Safadullah is working with present applicant. That for the past six months

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prior to the incident, the salary of Safadullah was not paid. Her husband Mohammad Iqbal Mohammad Yakub Shah was demanding the salary of his son. Applicant used to pay paltry amount of Rs. 200/- or Rs. 300/-. On 23/02/2016, in the afternoon, Mohammad Iqbal had been to the house of the applicant to demand the salary. There was verbal altercation and thereafter, Mohammad Iqbal had returned home. At about 7.00 p.m. on the same day, present applicant along with co-accused Hasan Dada had been to the house of the Mohammad Iqbal. They had initially abused Mohammad and thereafter had assaulted him with fist and kick blows. He was dragged outside the house and in the lane also Mohammad was assaulted. Mohammad had died instantaneous death.

3) Perused papers of investigation. All the witnesses including eye witnesses have stated that the applicant had assaulted Mohammad with fist and kick blows and he was made to fall on the ground. Coloumn no. 17 of the post mortem notes indicates that deceased had sustained a contusion on his – area which was irregular in shape. Coloumn no. 20 indicates as follows:

“Pneumonic consolidation seen bilaterally on cut section blood stain froth”. “There was hemorrhage on left side of the brain. Cause of death is due to head injury”.

4) The learned counsel for the applicant submits that applicant had neither intention nor knowledge that the victim would die instantaneously. That he had not used any weapon. That applicant had assaulted with fist and kick blows. It appears that deceased had sustained head injury due to fall on the ground.

5) Taking into consideration the material collected in the course of investigation, more particularly the nature of injury as indicated in post mortem notes, this Court is inclined to grant bail to the applicant. However, it is made clear that observations made herein above are restricted to an application under section 439 of the Code of Criminal Procedure, 1973 and shall not be considered for quashing of F.I.R., discharge application or at the time of trial.

ORDER

- (i) Application is allowed.
- (ii) Applicant be enlarged on bail on furnishing P. R. bond in the sum of Rs. 25,000/- with one or more local solvent sureties in the like amount.
- (iii) Applicant shall not enter into jurisdiction of Mankhurd Police Station till the conclusion of trial.
- (iv) Applicant shall report to concerned police station on first Sunday of each month between 10.30 a.m. to 01.00 p.m. till the framing of the charge.
- (v) Applicant shall attend each and every stipulated date before the Sessions Court.
- (vi) Upon failure to attend any two consecutive dates, the learned Sessions Judge shall issue non-bailable warrant and take the applicant into custody.
- (vii) Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)