

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO.911 OF 2017

Kamar @ Ekkyia Moinuddin Shaikh	... Applicant
vs.	
The State of Maharashtra	... Respondent
.....	

Mr. Abdulkarim N. Pathan for the Applicant.
Mr. S. H. Yadav, APP for the State.

**CORAM : T. V. NALAWADE, J.
DATE : 10.08.2017.**

P.C.:

1. The application is filed in C.R. No. 110 of 2015 registered in Wanwadi Police Station Pune for offence punishable under Section 302 read with Section 34 etc. of the Indian Penal Code. Both the sides are heard.
2. Deceased Akbar Bhaiya was known to first informant Mohammed Salim as informant had worked for some time with Akbar. Akbar has one daughter who was aged about 18 years in the year 2015. Ekkyia Shaikh the main accused was teasing the said girl and he was after her. One Babu Ikhlal had seen Ekkyia teasing the girl and he had informed about it to Akbar. Akbar and the first informant had tried to convince Ekkyia not to do such thing. When they had a talk with Ekkyia has friends Yogesh Adsul and other two friends were in the company of Ekkyia. At that time Ekkyia had quarreled with Akbar and during quarrel Akbar had given a slap to Ekkyia. Ekkyia had given a threat to Akbar during that incident.
3. The incident in question took place on 24th April 2015. Akbar and first informant and Mohammed Sajad were present at the

construction site of one housing society were first informant was working as watchman. These present Applicants Ekkyia Shaikh, Yogesh Adsul Amya and Kalim Nadaf came on two motor cycles. They started quarrel with Akbar and they started assaulting with kicks and fist blows. When Akbar collapsed, Yogesh Adsul picked up a cement block which was lying there and hit it on the head of Akbar. As the persons started shouting the assailant ran away. Attempt was made to save Akbar by shifting him to hospital but doctor declared that he was already dead. The report came to be given on 27th April 2015 and the crime came to be registered.

4. During the course of investigation the statements of aforesaid witnesses came to be recorded and spot panchanama came to be prepared. PM was conducted on the dead body. As many as 6 injuries were found on the dead body and the injury on the head had caused depressed comminuted fracture of the head and also left middle cranial fossa fractured. Death took place due to head injury.

5. The material collected show that all the four persons had come together and Ekkyia, present applicant is the main accused. The learned counsel for the Applicant submitted that Adsul through the cement block on the head and so bail can be granted to present applicant. He submitted that to other two accused though not to Adsul bail is granted and so applicant is entitled to bail on parity ground. This submissions is not acceptable. Other three persons were friends of present applicant and they did everything to help the present applicant. Motive of the crime was the aforesaid incident in respect of the daughter of the deceased. There is no other circumstances on the basis of which it can be said that Adsul had separate motive. In view of this circumstances and when provision of Section 34 of IPC is available, this Court holds that the defence of aforesaid nature cannot be considered at this stage. Considering the nature of offence and the reasons behind it,

this court hold that there is possibility of tampering of the witnesses from present applicant. It is not fit case to grant relief. In the result application stands rejected.

(T. V. NALAWADE, J.)