

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

CRI. BAIL APPLICATION NO. 1292 OF 2017

Shahabuddin @ Sunny Sarfuddin	.. Applicant
Vs.	
The State of Maharashtra	.. Respondent

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Mr. S.V. Marwadi a/w. Mallika Ingle, Advocate for the Applicant.
Mr. A.R.Kapadnis, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATED : JUNE 14, 2017.

P.C. :

This is an application for bail. The applicant is arrested in connection with C.R.No.197 of 2017, registered with Charkop Police Station for the offences punishable under sections 141, 143, 147, 149, 324 and 342 of the IPC. Section 304 (II) added subsequently. The applicant was arrested on 8th May, 2017 and since then he is in police custody.

2 The case of the prosecution is that there was a quarrel between the applicant and the co-accused and the victim and his associates. The applicant allegedly assaulted the victim with belt. After the incident of assault the deceased and his associates ran away from the place of incident, on a motorcycle.

The deceased was driving the motorcycle. It is alleged that the applicant and others chased the deceased on the motorcycle. When they were chasing the deceased. The deceased who was driving his motorcycle with speed, dashed at stationary vehicle. Due to injuries on account of the accident, the deceased died. The case of the accident was registered. However, charge under Section Section 304(II) was added subsequently on the ground that the deceased was driving with speed as he was chased by accused due to which he dashed at vehicle and died.

3 Learned advocate for the applicant submits that the applicant is in custody since 8th May, 2017. He submitted that on reading the FIR and statement of witnesses offence punishable under Section 304(II) is not made out. It is submitted that police had initially registered the case of accident and only on the basis of the statement that the deceased was driving motorcycle with full speed, as he was chased by the accused, Section 304(II) was invoked. The learned counsel appearing for the applicant submitted that the applicant may be released on bail.

4 Learned APP strongly opposed the application for bail. He submitted that from the FIR and the other evidence

collected by police, it is apparent that the deceased had died on account of the conduct of the accused persons. He, thereafter, submitted that the accused has committed a serious offence and liable to be prosecuted for an offence punishable under Section 304(II) of IPC. It is the prosecution case that the applicant is the person who had assaulted the deceased and his associates by using belt and due to fear the deceased had ran away from the place of incident.

5 I have perused the FIR. Taking into the prosecution case as it is, *prima facie*, it does not appears that a case under Section 304(II) can be made out. Section 304 of IPC reads thus:

“ ***Punishment for culpable homicide not amounting to murder.***—Whoever commits culpable homicide not amounting to murder shall be punished with 1[imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with

imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death."

Section 304 does not create an offence but provides for punishment for culpable homicide not amounting to murder. If the death is caused and case is covered by any of the five exceptions of Section 300, then such culpable homicide is not amounting to murder. If the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death, the case would be covered by Section 304(II) of IPC. Before a charge under Section 304 (II) can be invoked the material must at least *prima facie* show that the accused is guilty of culpable homicide and the act allegedly committed by him must amount to culpable homicide. In view of Section 299 of IPC, the material relied upon by prosecution must indicate that the accused had done an act which had caused death with at least such knowledge that he was by such act likely to cause death. The applicant is in custody

since 8th May, 2017. the learned advocate for applicant submits that there are no criminal antecedents against the applicant. The fact is not disputed by prosecution.

6 Considering the aforesaid circumstances, I am inclined to allow this application for bail.

7 Hence, I pass the following order:

:: ORDER ::

- (i) The Bail Application is allowed;
- (ii) The applicant is directed to be released on bail in connection with C.R.No.197 of 2017, registered with Charkop Police Station, on executing P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand) with one or two sureties in the like amount;
- (iii) The applicant is directed to attend Charkop Police Station, once in a week on every Saturday between 11.00 a.m. to 1.00 p.m., till filling of the charge-sheet;

- (iv) The applicant shall not tamper with the prosecution witnesses;
- (v) It is clarified that the observations made in this order are only for considering this Bail Application;
- (vi) Criminal Bail Application is disposed of accordingly.

(PRAKASH D. NAIK, J.)