

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2341 OF 2017

Shirin Mulla ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Shaikh Mohd.Ayub Mohamed Hussain for the applicant.
Ms. J.S. Lohokare, APP for the State.
PSI T.K. Mhaske, Dharavi, Police Station.

CORAM: A.M. BADAR, J.
DATED: 30th NOVEMBER 2017

PC:-

1. The applicant/accused in Crime No.97 of 2017 registered with police station Dharavi for the offence punishable under Section 302 of the Indian penal Code, is seeking her release on bail after filing of the charge sheet.

2. Heard the learned advocate for the applicant as well as the learned APP. The learned APP opposed the application by contending that the applicant had used 10 inches long knife for committing murder of her brother by stabbing at the chest. Therefore, in submission of the learned APP, offence

punishable under Section 302 is squarely made out and it cannot be said that there was no intention or knowledge .

3. I have considered the rival submission and also perused the entire charge-sheet. The report of post-mortem examination of dead body of Ismail shows that he suffered stab injury on his chest leading to death due to haemorrhagic shock.

4. The first informant Deepak is the Police Sub-inspector. He reported that Ismail (since deceased) was being admitted to the Sion hospital with a reason that he suffered a fall leading to unconscious. The first informant further reported that after inquiry he came to know that Ismail died homicidal death because of stab injury to him by his sister i.e. present applicant Shirin.

5. The applicant seems to be 20 years old age. She is sister of deceased Ismail. The sole eye witness to the incident is

Mohammad Ibrahim i.e. brother of the deceased as well as the present applicant.

6. Statement of several witnesses from the locality recorded by the investigators shows that deceased Ismail was not doing work for earning livelihood. He was addicted several vices. He always used to be under intoxication of some intoxicant.

7. On this factual backdrop let us see, what sole eye witnesses to the incident in question stated. Eye witness Mohammad Ibrahim—brother of the present applicant and deceased Ismail has stated that on 1.3.2017, at about 2 a.m. when he and his sister Shirin (present applicant) were present at their house, Ismail(since deceased) came and started quarrelling with his brother Mohammed Ibrahim as well as present applicant Shirin. He started asking present applicant Shirin to remove herself from the house alongwith her household articles at that point of time itself. Witness

Mohammad Ibrahim tried to intervene in the quarrel between his brother and sister. Upon that, as stated by Mohammad Ibrahim, Ismail (since deceased) rushed on his person for assaulting him. Ismail caught hold of neck of Mohammad Ibrahim and started constricting his neck. As stated by Mohammad Ibrahim, then present applicant rushed on the person of Ismail (since deceased) to save Mohammad Ibrahim and in that process she stabbed a knife on chest of Ismail by taking it from the kitchen platform. That is how death of Ismail was caused.

8. Statement of sole eye witness goes to show that deceased Ismail had attempted to constrict neck of the sole eye witness and therefore, their sister Shirin i.e. present applicant intervened and caused stab wound to the deceased.

9. Section 100 of the Indian Penal Code and more particularly, Clause-2 thereby provides that right of private defence extends to cause death when such an assault

reasonably caused the apprehension that grievous hurt would be caused with a consequence of such assault. In the case in hand, the assault was by constriction of neck of the sole eye witness. To save him, the present applicant gave a blow of knife on the assailant. In this view of the matter, I see no reason to deny bail to the present applicant. Therefore, the following order:-

ORDER

- i) The application is allowed.
- ii) The applicant/accused in Crime No.97 of 2017 registered with police station Dharavi for the offence punishable under Section 302 of the Indian penal Code, be released on bail on executing her P.R bond of Rs.15,000/- and on furnishing solvent surety in the like amount.
- iii) She should not tamper with the prosecution evidence.

iv) The applicant / accused shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him from disclosing such facts to the court or to the Police Officer.

(A.M. BADAR, J)