

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 2381 OF 2016**

Irfan @ Samir Mohammed Umar. ... Applicant
Vs.
The State of Maharashtra ... Respondent

Ms. Naima Shaikh i/b. Mr. Khan Abdul Wahab, Advocate for the applicant.

Mr. R.M. Pethe, APP, for the State.

**CORAM: SMT.SADHANA S.JADHAV,J.
DATE : JANUARY 4, 2017.**

P.C.

1 Heard the learned counsel for the applicant and the learned
APP for State. Perused papers.

2 This is an application under Section 439 of the Code of
Criminal Procedure, 1973. The applicant herein is arrested on 15/6/2016 in
Crime No. 146 of 2016 registered at Vinoba Bhave Nagar Police Station.
Investigation is completed and charge-sheet is filed against the accused for

the offence punishable under section 302 of the Indian Penal Code.

3 It is the case of the prosecution that the applicant happens to be the proprietor of the firm “Top Auto Care”, situated at Kurla. That in the said firm, they make seat covers for two wheelers and four wheelers. Rakhi Mangwana was working in the said firm and it appears that there was intimacy between the applicant and Rakhi. On 15/6/2016 Sagar Mangawana, who happens to be the brother of the Rakhi lodged a report at the police station contending therein that there were love relations between the present applicant and his sister. That he used to drop her home on several occasions and that Rakhi had disclosed to her parents that she is in love with the applicant. The parents of Rakhi had settled her marriage with one Anil. Despite that, the applicant used to call upon Rakhi at odd hours.

4 On 15/6/2016 the first informant received a phone call from the present applicant, thereby informing him that Rakhi had sustained injury with scissor and that she has been admitted in Kohinoor Hospital.

Upon enquiry, the applicant had allegedly disclosed that a scissor had fallen from the mezzanine on her back and she had sustained injury. Rakhi had succumbed to injury on the same day. On the basis of the report, Crime No. 146/16 came to be filed.

5 Compilation of the charge-sheet shows that one of the worker in the said unit is an eye witness to the incident. He has disclosed to the police that there were love relations between Irfan and Rakhi and there always used to be intermittent quarrel between them. It is also stated that the applicant used to call upon Rakhi at odd hours and abused her on various count. According to the eye witness, on 15/6/2016, there was quarrel between the applicant and Rakhi and thereafter, the applicant had asked her to leave the premises immediately. That Rakhi extended filthy abuses to the applicant. He had tolerated the same and driven her out of the firm. It is further disclosed that on the same day, Rakhi continued to keep on calling the applicant on his cell phone. He had abused her. At about 1 p.m. Irfan was cutting cloth material for stitching seat cover. Rakhi had

again visited the premises. She had raised quarrel with Irfan. There was altercation between the applicant and Rakhi. In the course of altercation, the applicant had asked Rakhi to leave premises forthwith. She refused to budge and at that time, in the course of the said altercation, the applicant stabbed Rakhi. She had fallen on the ground. The eye witnesses had called upon Sameer Bakerywala. The present applicant and Sameer Bakerywala had taken Rakhi to the hospital. Initially, she was taken to Kurla Nursing Home. From there, she was taken to Kohinoor Hospital for better treatment. The nurse from Kurla Nursing Home had also accompanied her to Kohinoor Hospital. At the time of admission, she was declared dead.

6 Perused the post mortem notes. It appears that there was a single stab injury sustained by the victim. The learned Counsel for the applicant submits that it was not a premeditated act. On the day of the incident, in fact, the applicant was persistently requesting her to leave the premises. However, she continued to call upon him and returned to the said unit. At the time of the incident, the applicant was cutting the cloth

material with a scissor and had stabbed the victim with the same. He had not taken undue advantage of the situation. It was in the heat of passion. The victim was abusing the applicant. There was a grave and sudden provocation. After the incident, the applicant had taken all efforts to save the victim as far as possible.

7 Taking into consideration the papers of investigation and the role attributed to the applicant and the circumstances in which the incident has occurred, this Court is of the opinion that the applicant deserves to be enlarged on bail.

8 However, it is made clear that the observations made herein above are prima facie in nature and are restricted to the application under section 439 of the Code of Criminal Procedure, 1973 and shall not be considered at the time of deciding the application for discharge or quashing of FIR or at the time of trial.

9 Hence, the following order is passed :

ORDER

- (i) The application is allowed.
- (ii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 50,000/- and one or more sureties in the like amount.
- (iii) The applicant shall report to Vinoba Bhave Nagar Police Station on 1st Sunday of each month between 10 a.m. to 12 noon till framing of charge.

10 The application is disposed of accordingly.

(SMT.SADHANA S.JADHAV, J.)