

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

CRIMINAL BAIL APPLICATION NO.465 OF 2018

Akib Elai Mulla	..Applicant
vs.	
The State of Maharashtra	...Respondent

**WITH
CRIMINAL BAIL APPLICATION NO.702 OF 2018**

Suraj Shamshuddin Saidekhan	..Applicant
vs.	
The State of Maharashtra	...Respondent

Mr. P. G. Sarda i/b Mr.Bhushan Walimbe for Applicants.
Mr. R. M. Pethe, APP for Respondent.
Mr. Ganesh N. Kone, PC Islampur Police Station, Sangli.

CORAM : P. N. DESHMUKH, J.
DATE : 18th APRIL, 2018

P.C.:

. Both these applications are arising out of C.R. No.329/2017 registered with Islampur Police Station, District Sangli for the offences punishable under section 302 read with 34 of the IPC and thus for the purpose of convenience they are heard and decided together by this common order.

2. Heard Mr.Sarda, learned counsel for applicants and Mr.Pethe, learned APP. It is submitted on behalf of applicants that on going through the complaint lodged by Sushant Jadhav though involvement of applicants is found along with co-accused Mazhar Humayun Saidekhan as assailants of deceased, only role attributed to both the applicants is of their committing assault by fist and kick blows and nothing more. Learned counsel for applicants then by referring to the statement of Karishma had

submitted that even according to her statement, who is the eye witness to the incident only involvement of applicants is of their committing assault on deceased by kick and fist blows. It is pointed out that similar is the statement of Ramesh Desai who has stated that the assault on deceased is by unknown persons by kick blows and has further specifically stated that none of the assailants were armed with any type of weapon.

3. Learned counsel for applicants in the background of above evidence available against applicants referred to the post mortem notes and contended that deceased was found to have sustained two external injuries in the nature of contused lacerated wound both on his lips and the cause of death is certified to be shock due to right side parietal region subdural haematoma due to head injury. Internal injuries as referred in post mortem notes reveals fracture of skull. It is therefore submitted that as according to the case of prosecution assault even if admitted as it is since same is by fist and kick blows, there is nothing to establish as to how deceased sustained head injury causing fracture of skull which necessarily has to be by hard and blunt object. However according to the case of prosecution assault attributed to the applicants and to co-accused is only by fist and kick blows. In the circumstances, it is therefore case of applicants that no intention can be attributed to any of them to commit murder of Suraj Jadhav as there is every possibility of his sustaining head injury due to fall on the ground. It is therefore submitted that since charge-sheet is filed and on considering facts as aforesaid applications be allowed.

4. Learned APP has opposed the applications by referring to statement of one Sagar Pawar and has submitted that about 15 days prior to the incident of assault on deceased, co-accused Rafiq Saidaikhan had informed Sagar that he should make deceased understand otherwise he will be in trouble and on the basis of said statement of Sagar has submitted that

it shows intention on the part of accused of committing planned attack on deceased. The submissions advanced as aforesaid however cannot be considered against applicants as from the statement of Sagar what reveals is that the said fact was informed to him by co-accused Rafiq Saidaikhan, who is not before Court.

5. Learned APP though referred to statements of Ananda Shivaji Jadhav, Amit Arjun Jadhav, their statements do not lead case of prosecution any further. Lastly, learned APP referred to statement of Karishma recorded under section 164 of Cr.P.C. and submitted that according to her statement presence of both applicants is established near her house at the time of incident. However submissions as such are of no consequence in as much as applicants had nowhere disputed their presence at the spot, as it is specific case of applicants that since they are involved in assault by fist and kick blows only, neither of the applicants can be attributed to have intention to kill deceased Suraj Jadhav.

6. In the background of submissions advanced as aforesaid, from the statement of complainant it is revealed that both the applicants along with co-accused committed assault on deceased by fist and kick blows when he had visited room of Karishma some time in the late hours in the night of 28/9/2017. Statement of Ramesh Desai as stated aforesaid only establish some incident of assault in front of house of Karishma as according to him he could not identify any of the assailants and thus stated that in the source of light he could only notice three unknown boys, committing assault on one boy by fist and kick blows.

7. In view of statement of Karishma, Ramesh Desai involvement of applicants is thus established of their committing assault by kick and fist blows only which is substantially found corroborated from the post mortem

notes wherein only two external injuries in the form of CLW are certified to have sustained both on lips though as per post mortem report deceased has sustained internal injury in the nature of fracture of skull. From the available evidence against applicants on record there is nothing to establish that this injury was caused by either of the applicants which proved to be fatal.

8. In view of above discussion and as investigation is completed and charge-sheet is filed there appears no reason to reject the applications. Applications are therefore allowed as per order below:

ORDER

- i) Applicants shall be released on bail in C.R. No.329/2017 registered with Islampur Police Station, District Sangli on their executing P.R. Bonds in the sum of Rs.50,000/- each with one surety each in the like amount;
- ii) While on bail applicants shall mark their presence with Islampur Police Station, District Sangli once on the first day of each such month pending trial;
- iii) Applications are disposed of as allowed.

(P.N. DESHMUKH, J)