

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

BAIL APPLICATION NO. 2478 OF 2018

Anil Raghunath Dhavade

....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Anand Patil I/b. Anand Patil & Associates for the applicant.

Mrs. J.S. Lohokare, APP for the State.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED: 26th OCTOBER, 2018.

P.C.:

. This is an application under Section 439 of Criminal Procedure Code filed by the aforesaid applicant who is facing trial in Sessions Case No.49/2018 pending on the file of Additional Sessions Judge, Kolhapur. The said case arises from C.R.No.552/2017 registered with Shahupuri Police Station, District Kolhapur for offences punishable under section 302 of the Indian Penal Code.

2. Heard Mr. Anand Patil, learned counsel for the applicant. He submits that the material on record prima facie indicate that the applicant had inflicted a single blow. He had no intention of causing the death. He has further submitted that the incident had occurred on the spur of the moment. He contends that the offence under section

302 is not made out and considering the fact that the applicant is in custody since 02/12/2017, he be released on bail.

3. Mrs. J.S. Lohokare, learned APP submits that the manner in which the injury was inflicted would prima facie indicate that the applicant had intention to cause his death or at least the knowledge that such an injury would result in death. She submits that there is prima facie material to show that the applicant is involved in committing offence under section 302 of the Indian Penal Code. The offence is of serious nature and the applicant is not entitled for bail.

4. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

5. The aforesaid crime was registered pursuant to the first information report lodged by one Mahesh Kodappa Pawar, the friend of the deceased Samir. A perusal of the first information report prima facie reveal that on 02/12/2017, the deceased Samir had requested the first informant to accompany him to Omkar Apartment. The deceased entered one of the apartments on the first floor of the said building. The first information report reveal that the applicant had opened the door and questioned the deceased as to why he had come to his house.

The deceased had abused and manhandled him. The material on record further reveals that the deceased had also slapped the applicant at which time the applicant had picked up a knife which was lying on the spot and stabbed the deceased Sameer. The first information report further indicate that when questioned, the applicant had told him that the deceased was harassing his wife and that he had tolerated the same for quite some time.

6. The statement of Apurva Anil Dhavade, the wife of the applicant who is also an eye witness prima facie reveals that the deceased was harassing her. He was trying to establish close relationship with her. She claims that the deceased would constantly call her. She had informed her husband about the behaviour of the deceased and he had assured her that he would talk to the deceased and later told the deceased not to interfere with her.

7. This witness further claims that on 02/12/2017, while she was cutting vegetables, the deceased came to her house and abused and assaulted her husband and pushed her when she tried to intervene. She has stated that her husband, in a fit of anger, picked up a knife which was lying at the spot and stabbed said Sameer and immediately thereafter, with the help of neighbours took said Sameer to the

hospital.

8. The statement of Swapnil Tanaji Nalawade also prima facie indicates that the deceased had gone to the house of the applicant and that the deceased had assaulted and abused the applicant and that the applicant had picked up a knife which was lying on the spot of the incident and stabbed said Sameer. The statement of Prema Shankar Borade also prima facie reveals that the deceased used to harass her daughter Apurva. He wanted to have relationship with her and used to constantly phone and send SMS on her mobile phone.

9. The post mortem report prima facie reveal that the deceased had : *one stab injury of 2cmx1cm on abdominal cavity deep present vertically over lateral aspect of abdomen in left lumbar region, situated 24 cm below to left nipple and 15 cm left lateral from midline of abdomen.* Doctor has certified that the cause of death was “*hemorrhage following stab injury (unnatural)*”.

10. The material on record prima facie reveals that the deceased was trying to establish close relationship with the wife of the applicant. He was constantly harassing her by phoning her and sending her SMS..

She had complained to her husband about the same who had earlier intervened and told the deceased to stay away from his wife Apurva. The records prima facie reveals that on the date of the incident, the deceased had gone to the house of the applicant. He had abused and assaulted the applicant. It was under such circumstances that the applicant had picked up a knife which was lying on the spot of the incident and had given a single blow of knife on the abdomen of the said Sameer. The above facts and circumstances, in my considered view, would justify grant of bail. The applicant is in custody since 02/12/2017. Charge sheet has already been filed and the presence of the applicant is no longer required in custody for the purpose of interrogation and/or investigation. The applicant is a resident of Bagal Chowk, Kolhapur and there are no chances of his absconding and/or thwarting the course of justice. He has no criminal antecedents.

11. In the light of above facts and circumstances, particularly the nature of the offence, in my considered view, the applicant is entitled for bail. Hence, the Bail Application is allowed on the following terms and conditions :-

(a) The applicant who is arrested in C.R.No.552/2017 (Sessions Case No.49/2018) registered with Shahupuri Police Station, District

Kolhapur is ordered to be released on bail on furnishing bail bonds of Rs.50,000/- (Rupees Fifty Thousand) with one or two solvent sureties in the like amount.

(b) The applicant shall furnish his permanent address and temporary address, if any, and his contact details to the concerned Court.

(c) The applicant shall not change his residential address without prior intimation to the concerned Court and to the Investigation Officer.

(d) The applicant shall report to the Investigation Officer or in his absence to the Senior Police Inspector of Shahupuri Police Station on 01st Monday of every month until further orders.

(e) The applicant shall not interfere with the witnesses and shall not tamper with the evidence in any manner.

(SMT. ANUJA PRABHUDESSAI, J.)