

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

CRIMINAL BAIL APPLICATION NO.461 OF 2018

Nilesh Hanumant Koli	... Applicant
V/s	
The State of Maharashtra	... Respondent

Mr. Aniket U. Nikam for the Applicant.
Mr. Prashant Jadhav, APP for the State.
Mr. V.S. Mali, ASI-MIDC Bhosari Police Station, Pune present.

**CORAM : SMT.SADHANA S. JADHAV, J.
DATE : JUNE 05, 2018.**

P.C. :

1. Heard.
2. This is an application under Section 439 of Cr.P.C.. The applicant herein is arrested on 18th September 2016, in Crime No.303 of 2016, registered at MIDC, Bhosari Police Station, Pune for the offence punishable under Section 302 r/w 34 of Indian Penal Code. The investigation is completed and charge-sheet is filed.
3. It is the case of the prosecution that on 17th September, 2016 one Nilam Bhalerao had lodged the report at MIDC, Bhosari

Police Station alleging therein that Pandurang Gajdhane who resides opposite her house had abused her and her family members in an intoxicated state of mind. On the basis of the said report N.C.No.985 of 2016 was registered against Pandurang Gajdhane.

4. That on 18th September 2016, Devanand-son of Pandurang Gajdhane lodged the report at the police station alleging therein that on 17th September 2016, his father had not returned home and hence, his brother had made telephonic call and informed him that there was a quarrel between Nilam Bhalerao and his father and that N.C. was registered against his father. It is further reported that on 18th September 2016, his father had not returned home, thereafter, he was informed by Nilya Koli i.e. the present applicant and Rahul Salunkhe that they had assaulted Pandurang Gajdhane and that he must have died near Lingeshwar Maharaj Math. Initially, the complainant presumed that since his father was alcoholic he would return home after he regained consciousness. However, subsequently he went to the spot and noticed that his father had sustained injuries and there was bleeding from nose and head. The police had arrived at the spot

and the police had taken the injured to YCM hospital, Pimpri in ambulance. They were advised to shift the patient to private hospital and patient was shifted to Ayush hospital. Pandurang succumbed to the injuries at 5.15 a.m. According to the complainant, in all probabilities, Amol Bhalerao who happens to be brother of Nilam Bhalerao must be instrumental and that he alongwith Rahul Salunkhe must have assaulted his father. The certificate issued by Ayush Multispeciality hospital indicates history as follows:-

“The Patient has history of physical assault by his neighbour Amol Bhalerao followed by fall of road on head. Pandurang was unconscious and in a gasping state. He was kept on mechanical ventilation. His condition was poor. It is further pertinent to note that the patient's note would indicate that the deceased had sustained contusion, abrasion on the area of skull. There was a corresponding natural injury to the head.”

There are no other injuries. The cause of death is head injuries i.e. the corresponding natural injury of injury No.1 shown in column No. 17.

5. Learned counsel for the applicant submits that in fact there was an altercation and in the said altercation Pandurang had

fallen down and had sustained the said injuries. The said submission is corroborated by the statement of three eye witnesses who have categorically stated that on the relevant day i.e. on 17th September 2016, they had seen Pandurang was quarreling with Nilya Koli, Rahul Salunkhe and Amol Bhalerao. They were assaulting him with fist and kick blows and the injured had fallen on the head. It cannot be said that it was premeditated act.

6. Learned APP vehemently submits that the applicant herein does not deserve bail as he was externed on the previous occasion in the year 2013, as three cases under Section 324 of IPC were registered against him. The period of externment was two years. After externment period was over, the applicant had returned and again indulged into similar activities and therefore, he does not deserve to be enlarged on bail. As against this, learned counsel for the applicant has placed reliance upon the medical certificate of the applicant which shows that the applicant had sustained fracture injuries on the ulna and was operated just four weeks before the alleged incident. Rods were fitted into his ulna. It is pertinent to note that the said certificate

forms the part of the charge-sheet. Taking into consideration the above mentioned facts, the court is of the opinion that the applicant has made out a case for grant of bail. However, it is made clear that the co-accused shall not claim parity with the present case.

7. The observations are restricted to application under section 439 of Cr.P.C. and shall not be taken into consideration for the purpose of quashing of FIR or discharge application or at the time of trial. Hence, the following order:-

ORDER

- i) The Application is allowed.
- ii) The applicant be enlarged on bail on furnishing PR bond in a sum of Rs.50,000/- with one or more solvent sureties in the like amount.
- iii) The applicant shall not reside in Pune district till the conclusion of trial except for attending the dates in the court.
- iv) The application is disposed of accordingly.

(SMT.SADHANA S.JADHAV, J.)