

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 529 OF 2018**

Amit Indradev Gupta

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Manoj S. Mohite a/w Ms. Regina Correia I/b Mr. A. V. Chatuphale for the Applicant

Ms. J. S. Lohokare, A.P.P for the Respondent-State

PSI Mr. Chirmade from Kapurbawdi Police Station, Thane, is present

CORAM : REVATI MOHITE DERE, J.
WEDNESDAY, 25th APRIL, 2018

P.C. :

1. Heard learned Counsel for the parties.
2. By this application, the applicant seeks his enlargement on bail in connection with C.R. No. I-1 of 2017 registered with the Kapurbawdi Police Station, Thane, for the alleged offences punishable under Sections 302 r/w 34 of the Indian Penal Code.
3. Perused the papers. The incident in question has taken place in the intervening night of 31st December, 2016 and 1st January, 2017. According to the complainant-Sachin More, an eye-witness to the incident,

he and Vikas were returning home after celebrating New Year; at around 12:45/1:00 a.m. He has alleged that there was a quarrel between Vikas and the applicant with respect to where the car would go; the deceased-Vikas wanted to go to Kalyan, whereas, the applicant who was sitting in the car, wanted the car to go to Mumbra. It is alleged by the complainant, that deceased-Vikas came and informed him about the same i.e that there was a quarrel between them. He has further stated that when they were talking to each other and when Vikas was asking the auto rickshaw driver, whether he would go to Kalyan, just then, at about 1:30 a.m, the applicant came with three unknown persons and started assaulting Vikas. The applicant is alleged to have assaulted Vikas with a knife on his abdomen. A perusal of the post mortem report shows that the deceased had sustained an incised wound over left cheek from angle of mouth to preauricular region about 10 x 1½ cm x 1½ cm; incised wound over left zygomatic region about 2 x ½ x ½ cm; stab wound over right side below umbilic hypogastilic region 3 cm penetrating upto intestinal walls, as a result of which, he succumbed to the same. The post-mortem report shows that the deceased had also sustained two stab wound injuries; punctured wound on right side below umbilical region CLW On left side of face 15 x 2 x 2 cm.

4. Learned counsel for the applicant submitted that the applicant and deceased were not known to each other and as such, there was no motive for the applicant to assault the deceased; that the incident took place at the spur of the moment and at the highest, the offence would be under Section 304. Whether or not, the offence would be one under Section 302 or a lesser offence, is a matter which will be considered by the trial Court, during trial. *Prima facie*, it appears that the applicant was carrying a knife and without any provocation, assaulted the deceased with the knife. The deceased expired due to the injuries (mentioned in para 3) sustained by him.

5. Considering the aforesaid, this is not a fit case to enlarge the applicant on bail. The application is accordingly rejected. However, the trial of the applicant is expedited.

6. If, for no fault of the applicant, the trial does not conclude within a reasonable period i.e. 12 months from today, the applicant is at liberty to file a fresh application.

7. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

8. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.