

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

**CRIMINAL BAIL APPLICATION NO. 771 OF 2018**

Ganesh Bharat Todkari.

..Applicant.

V/s.

The State of Maharashtra.

..Respondent.

Mr. Aniket U. Nikam I/b. Mr. Harshal Sunil Patil, advocate for applicant.

Mr. S.S. Pednekar, APP for State.

**CORAM : SMT. SADHANA S. JADHAV,J.**

**DATE : JUNE 22, 2018.**

**P. C. :**

1            Heard the learned Counsel for the applicant and the learned APP for State.

2            This is an application under section 439 of the Code of Criminal Procedure, 1973. The applicant herein is arrested on 1/10/2016 in Crime No. 582 of 2016 registered at Bharati Vidyapeeth Police Station of offence punishable under section 302 of the Indian Penal Code. The investigation is completed and charge-sheet is filed.

3            It is the case of the prosecution that on 25/9/2016 one

*Talwalkar*

Sadanand Swami filed a report alleging therein that on 24/9/2016 he was called by his friend Atul More to his flat. He reached the flat at about 8.30 p.m. He had seen that Atul was consuming alcohol. In the meanwhile, other friends had also reached to his flat and all were consuming alcohol. The applicant being one of them. It appears that the applicant reached house of Atul. He had already consumed alcohol. They continued to have party for a long time. Balaji Jadhav had come to the flat. He had brought packed meals for all. In the meanwhile, one Shyam Mate had also joined to them. While they were discussing, Atul had started questioning Shyam about his place of residence, his occupation etc, which was not liked by the present applicant. It appears that when Shyam had left the room for a while, the applicant had questioned Atul More as to why he had made enquiry with Shyam. There was verbal altercation. It appears that Atul had thrown curry on the face of the present applicant. They were abusing each other. The applicant had warned Atul More. However, Atul More had challenged the applicant and in a fit of rage, the applicant is alleged to have picked the bottle of alcohol and assaulted Atul with the same just behind his ear. Atul had immediately fallen unconscious. The present applicant and the first informant and other friends were scared. They had tried to wake up Atul by sprinkling water on his face. However, Atul had not regained consciousness. Thereafter, the present applicant with the help

of others had taken him to Sassoon Hospital. Atul was declared dead on admission. The present applicant had got scared and fled from the spot.

4           Upon arrest, the applicant was sent for medical examination and it was seen that he had certain scratches on his person. Some wounds were sutured. There were in all four injuries on his person. An opinion was sought and it was revealed that the said injuries are approximately 3 days ago. That it appears that the applicant had consumed Zinc Phosphate as he was scared that his friend Atul had died at his hands.

5           Learned Counsel for the applicant vehemently submits that the applicant had no intention to eliminate Atul. The incident had occurred on the spur of the moment. The deceased and the accused were under the influence of alcohol. That there was sudden provocation by Atul at the moment when the incident occurred. The applicant has no criminal antecedents.

6           Taking into consideration the papers of investigation and the submissions advanced across the bar, it can be said that the applicant has made out a case for grant of bail.

7           The observations are prima facie in nature and shall not be considered for discharge application or at the time of trial.

8           Hence, 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 solvent sureties in the like amount.

(iii)         The applicant shall not tamper with the evidence.

(iv)         The applicant shall give an undertaking to the concerned police station within two weeks from his release that he would attend all the dates of the trial. He shall also furnish his residential address as well as his contact number such as cell phone number, landline number etc.

9           The application is disposed of accordingly.

**[SMT. SADHANA S. JADHAV, J.]**