

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 801 OF 2018**

Santan Diego Fernandes	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr. Rajendra Shirodkar I/b Mr. Archit Sakhalkar for the Applicant

Ms. Rutuja Ambekar, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.
TUESDAY, 10th 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. 187 of 2017 registered with the Gamdevi Police Station, Mumbai, for the alleged offence punishable under Section 302 of the Indian Penal Code.

3. Perused the papers. According to the prosecution, the incident took place on 19th October, 2017 at about 5:00 p.m. It is alleged that the applicant assaulted the deceased by fist and kick blows. On the next day i.e. on 20th October, 2017, the deceased-Sanjay was admitted to the clinic by the applicant himself, as Sanjay had pain in his abdomen. Sanjay

became unconscious in the evening and thereafter, expired. The post mortem examination report shows that Sanjay died 'due to trauma to abdomen'. Pursuant thereto, the complaint was lodged and the applicant was arrested. It appears from the prosecution case, that Sanjay (deceased) was working as a watchman in the building in which the applicant was residing. The applicant had asked Sanjay to get some eatables and as Sanjay reached late, there was an altercation between the applicant and Sanjay. The applicant is alleged to have assaulted Sanjay with fist and kick blows as well as with a bamboo stick. The cause of death as noted above is stated to be death due to trauma in abdomen. Considering the manner in which the incident has taken place, it is *prima facie* doubtful whether an offence under Section 302 is disclosed as against the applicant.

4. Learned A.P.P submitted that there are four antecedents as against the applicant. However, learned counsel for the applicant states on instructions that out of the said four cases, the applicant has been acquitted in three cases and that there is only one case (for a minor offence), which is pending against him.

5. Be that as it may, whether the offence is one under Section 302 or a lesser offence, is a matter, which will be decided by the trial Court. The applicant is in custody since 20th October, 2017. Investigation is complete and charge-sheet is filed. Considering the aforesaid, the application is allowed and the applicant is enlarged on bail on the following terms and conditions :

ORDER

- (i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 50,000/- each, with one or more local solvent sureties in the like amount;
- (ii) The applicant shall attend the concerned Police Station on the first Sunday of every month between 10:00 a.m. to 11:00 a.m., till the conclusion of the trial;
- (iii) The applicant shall not tamper or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(iv) The applicant shall inform his latest place of residence and mobile contact number and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(v) The applicant to cooperate with the conduct of the trial;

(vi) The applicant shall file undertaking with regard to clauses (ii) to (v) in the trial Court, within two weeks of his release;

(vii) If there are two consecutive defaults in appearing before the trial Court or in reporting to the Investigating Officer and if there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

6. The application is allowed in the aforesaid terms and is accordingly disposed of.

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.