

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

BAIL APPLICATION NO. 936 OF 2018

Kunal Rajendra Wagh

... Applicant

Vs.

State of Maharashtra

... Respondent

...

Mr. Iqbal A. Zarodarwala for the applicant.

Ms. A.A. Takalkar, APP for the Respondent-State.

Mr. Tanaji Rode, API, Kalwa, Police Station is present.

...

CORAM : PRAKASH D. NAIK, J.

DATE : 6th OCTOBER, 2018.

P.C.

1. Applicant is seeking bail in connection with C.R. No. I-262 of 2017 registered with Kalwa Police Station for the offence punishable under Section 302 read with 34 of Indian Penal Code.
2. The prosecution case is that deceased was found in an injured condition on 23rd July, 2017 and hence he was taken to the hospital for treatment. Subsequently, he was declared dead. Accidental Death Report was registered during the course of investigation. CCTV footage relating to the incident was collected by the police. CCTV footage indicates that two person had assaulted the deceased. Both accused had thrown stone lying at

the scene of offence on the head of the deceased. Postmortem report indicates that the cause of death is due to head injury.

3. Counsel for the applicant submitted that the incident has occurred under the influence of liquor. Taking the prosecution case as it is there was no intention to commit the murder. There is no eye witness to the incident. The prosecution is relying upon the CCTV footage which is not reliable. Applicant is in custody from 11th August, 2017. It is thus submitted that applicant be released on bail.

4. Learned APP submitted that CCTV footage shows role of applicant as a person who has thrown the stone on the head of the deceased. Accused were identified by the family members of the deceased in the CCTV footage. Independent witness has also identified the applicant as a person who has been seen in CCTV footage who committed the alleged act. Medical opinion with regards to the cause of death also indicates that head injury is possible by stone. There is recovery of the stone at the instance of the applicant. Certificate under Section 65B of the Indian Evidence Act has been obtained by the Investigating Agency.

5. I have gone through the record. It is apparent that the applicant's involvement is revealed in the CCTV footage collected

by the investigating authority. It is evident that the applicant is the person who assaulted the deceased by throwing the stone on his head which is cause of death. In the CCTV footage, the applicant was identified by the family members of the deceased as well as independent witness. Submission of the learned counsel for the applicant is that there was no intention to kill the deceased cannot be accepted at this stage. In the light of the nature of the offence against the applicant, no case is made out for grant of bail. Hence, Criminal Bail Application stands rejected.

Sachidanand
Kuttan Nair

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(PRAKASH D. NAIK, J.)