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

BAIL APPLICATION NO. 982 OF 2018

Mohd. Kalim Mohd. Shafik Shaikh

..Applicant

Vs

The State of Maharashtra

..Respondent

Mr. Rajiv Patil, Senior Advocate I/b Hasan Patel for applicant.

Ms. J.S. Lohokare, APP for State.

CORAM : A.S.GADKARI, J.

DATE : 20th July 2018.

P.C.:

1] This is an application under Section 439 of the Cr. P.C for bail in CR No.I-299 of 2017 dated 8.9.2017 registered with Bhiwandi City Police Station, District- Thane under sections 302, 325, 323 read with 34 of the Indian Penal Code.

2] Heard the learned Counsel for the applicant and the learned APP for the State. Perused the chargesheet.

3] The name of deceased is Manojkumar Rathod. The date and time of incident is 4.9.2017 at about 10.30 p.m The present crime has been registered on 8.9.2017 initially under Section 325, 323, 504 read with 34 of

the Indian Penal Code. The deceased succumbed to injuries on 22.9.2017 and therefore section 302 of the Indian Penal Code has been added to the present crime.

The prosecution case in brief is that, the deceased Manojkumar had parked his two wheeler vehicle near the handcart of the brother of applicant namely Salim. That the deceased was under the influence of liquor. It is alleged that, applicant abused and passed sarcastic comments against the deceased over his stature and also over the parking of two wheeler vehicle. The deceased abused applicant and co-accused and initially a quarrel took place amongst them. The said quarrel ensued in a fight wherein it is alleged that the applicant assaulted deceased with fist blows. As deceased was proceeding towards Narpoli Police Station to lodge complaint, the accused persons accosted deceased and again assaulted him near Gani Compound, Bhiwandi. The deceased fell down at scene of offence and thereafter accused persons fled away from the spot. The deceased Manojkumar himself had given his statement on 7.9.2017 and the first information report is lodged on 8.9.2017. On 7.9.2017 when deceased started feeling severe pain in his head, under the advise of Doctor he was hospitalized and in the said hospital deceased Manojkumar succumbed to

injuries on 22.9.2017. During the course of investigation, the applicant came to be arrested on 3.10.2017 and after completion of investigation the police have submitted chargesheet.

4] The record indicates that, deceased Manojkumar while lodging the first information report has not named the applicant and had only gave discreption of the accused persons who assaulted him. One eye-witness to the crime namely Ramesh Sapkal has stated that on 4.9.2017 at about 11.00 p.m he saw two persons assaulting one person and after the victim fell on the ground, accused persons fled away from the scene of offence. Thereafter the victim got up and demanded a bidi from the said witness. The said witness refused to oblige the victim and therefore the victim (deceased) went away from the said place by walk. The said witness has not identified the applicant as the accused who assaulted deceased on 4.9.2017 at 11.00 pm. It is to be noted here that, the alleged incident of assault took place on 4.9.2017 between 10.00 p.m to 11.00 p.m and victim Manojkumar himself lodged the present crime on 7.9.2017 with the police. That the victim succumbed to injuries on 22.9.2017.

5] The medical report suggests that deceased had a fracture to his right side of ribs and due to internal bleeding, he died. From the

aforestated chronology, it is apparent that the accused persons did not have intention to kill Manojkumar and assaulted him in the fit of rage over the quarrel which took place between them pertaining to parking of vehicle.

6] In view thereof, the applicant can be released on bail.

Hence, the following Order:-

i] Applicant be released on bail in CR No. I-299 of 2017 registered with Bhiwandi City Police Station, District- Thane on his furnishing PR bond of Rs.25,000/- with one or two solvent local sureties in the like amount.

ii] After his release from jail, the applicant shall attend the Bhiwandi City Police Station, District- Thane on every first Monday of the month between 11.00 a.m to 1.00 p.m

iii] Applicant shall also attend all the dates before the Trial Court unless precluded for medical reasons.

iv] Any two consecutive defaults in complying with the aforestated conditions will attract the provisions of cancellation of bail.

7] Application is allowed in the aforesaid terms.

(A.S.GADKARI, J.)