

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

BAIL APPLICATION NO. 1003 OF 2018

1. Mohd. Arif S/o Mustafa Sayyed
2. Mohd. Sheif S/o Mustafa Sayyed ... Applicants
Vs.
The State of Maharashtra & Anr. ... Respondents

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Mr. Aniket Gawand I/by R.P. Javanjal for the applicants.
Ms. A.A. Takalkar, APP for the Respondent-State.
Mr. Gujar, P.I. Traffic Department Kurla is present in person.

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**CORAM : PRAKASH D. NAIK, J.
DATE : 27th AUGUST, 2018.**

P.C.

1. This is an application for bail in connection with CR No. 84 of 2017 registered with Shahu Nagar Police Station for an offence under Section 302, 325 read with 34 of Indian Penal Code.
2. The case of the prosecution is that the applicant and the other accused had allegedly assaulted Mohd. Sarif (deceased) with fist and kick blows as he had caused damage to taxi of one of the accused. The applicants were arrested on 19th March, 2017.
4. Learned counsel for the applicants submitted that taking the case of the prosecution as it is, Section 302 of Indian Penal Code is not made out. It is submitted that the co-accused who has been

attributed similar role has been granted bail by this Court. Applicant is in custody for about one and half year.

5. Learned APP submitted that all accused had assaulted the deceased by fist and kick blows which has resulted in his death. The deceased was a drug addict who was assaulted by the accused for no reason and on account of the assault, deceased had died. It is submitted that whether the case would fall under Section 302 of Indian Penal Code or not can be considered at the time of trial. Co-accused has been granted bail because she was lady. Learned APP also submitted that applicant is permanent resident of U.P. and they have no permanent address at Mumbai. On the other hand learned advocate for applicants submitted that applicants are residing at the address mentioned in the cause title of the application. Applicants are willing to report the concerned police station during the pendency of trial.

6. On going through the documents, it is apparent that the deceased was assaulted by the accused as he had caused scratch to taxi of one of the accused. All of them had given fist and kick blows to the deceased. Investigation is completed and chargesheet has been filed. The applicants are in custody since long. On perusal of the postmortem report it can be seen that the deceased

had sustained the following injuries.

- 1) Contusion, 2 cm x 2 cm over middle of chest on right side.
- 2) Two abrasions with reddish scab, 1.5 cm x 1 cm and 2 cm x 1.5 cm over lateral aspect of right knee joint.
- 3) Abrasion with reddish scab, 4 cm x 0.8 cm over medial aspect of middle part of right leg.
- 4) Two abrasions with reddish scab, 2 cm x 2 cm and 1 cm x 0.3 cm over right scapular area.
- 5) Abrasion with dark brownish scab 1.5 cm x 1 cm over lateral aspect of left knee joint.

Admittedly, no weapon was used in the commission of the offence.

The other accused has been granted bail. Both of them were attributed same identical role. In the circumstances, further custody is not required. Taking into consideration the aforesaid aspects, the case for grant of bail is made out.

ORDER

- i) Bail Application No. 1003 of 2018 is allowed;
- ii) The applicants are directed to be released on bail in connection with C.R No. 84 of 2017 registered with Shahu Nagar Police Station which is subject matter of Sessions Case No. 490 of 2017 on furnishing P.R. Bond of Rs.25,000/- each with one or more sureties in the like amount;
- iii) Applicants are permitted to furnish cash security in the sum

of Rs.25,000/- (Rs. Twenty Five Thousand only) for a period of four weeks

- iv) Applicants shall report at Shahu Nagar Police Station once in a month on first Saturday between 10 a.m. to 12 noon till conclusion of the trial;
- v) Applicants shall co-operate with the conduct of the trial;
- vi) Applicants shall inform their latest place of residence and contact number or change of residence or contact number, if any, to the Investigating Officer;
- vii) The applicant shall not tamper with the evidence and/or influence the prosecution witnesses;
- viii) The application stands disposed off.

(PRAKASH D. NAIK, J.)

Sachidanand
Kuttan Nair

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by Sachidanand
Kuttan Nair
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