

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****BAIL APPLICATION NO. 1163 OF 2018**

Kabir Haroon Shaikh

....Applicant.

Vs.

The State of Maharashtra

....Respondent.

Mr. S.V. Marwadi I/by Kartik Garg I/by K.G. Marwadi for the Applicant.

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

CORAM : A. S. GADKARI, J.

DATE : 19th JULY, 2018.

P.C.:-

This is an Application under Section 439 of the Code of Criminal Procedure for bail in CR No. 440 of 2017 dated 31st October, 2017 registered with Wadala T.T. Police Station under Section 302 of the Indian Penal Code.

2 Heard the learned counsel appearing for the Applicant and the learned APP. Perused the charge sheet.

3 The name of the deceased is Bablu Harun Shaikh. The date of incident is the intervening night of 28th October, 2017 and 29th October, 2017.

The prosecution case in brief is that, deceased Bablu Shaikh was addicted to liquor and after consuming liquor, he used to demand money from the Applicant, who is his real brother and also used to create scene in house by abusing the Applicant in filthy language. That on 28th October, 2017, between 11 p.m. to 1.00 a.m. of 29th October, 2017, deceased Bablu was heavily inebriated and was shouting loudly in the house. When the Applicant tried to pacify him, he abused the Applicant in filthy language. It is the allegation against the Applicant that, the Applicant therefore assaulted Bablu with fist and kick blows and throttled his neck. On 29th October, 2017, in the morning when the neighbours took the Bablu to the hospital, he was declared dead prior to the admission. The first information report is lodged by Shri. Amol Salunkhe, Police Sub-Inspector attached to the Wadala T.T. Police Station on 30th October, 2017.

During the course of investigation, the Applicant came to be arrested on 30th October, 2017 and after completion of investigation, the police have submitted charge sheet.

4 The prosecution has relied upon the extra-judicial confession given by the Applicant to his elder brother namely Mustafa Shaikh that, on the date of incident, Bablu was heavily inebriated and

was creating ruckus in the house and he also abused the Applicant in the filthy language when the Applicant tried to pacify him and therefore, the Applicant assaulted him with fist and kick blows. The statements of neighbours corroborate the fact that on 28th October, 2017 at about 11.00 p.m. they heard noise of deceased Bablu in his house, he was in inebriated condition and the deceased Bablu was also shouting in filthy language.

5 After considering the statements of the witnesses, *prima facie* it appears that, the Applicant with a view to keep the said Bablu in control, assaulted him with fist and kick blows and during the said assault and in the hit of rage, the Applicant might have pressed the neck of the deceased. It *prima facie* appears that, the Applicant being a real brother of the deceased was not having intention to commit the murder of deceased Bablu.

In view of the above, the Applicant can be released on bail.

6 Hence the following order:-

- a) The Applicant be released on bail in CR No. 440 of 2017 registered with Wadala T.T. Police Station on his furnishing PR bond of Rs.25,000/- with one

or two solvent local sureties in the like amount.

- b) After his release from Jail, the Applicant shall attend the Wadala T.T. Police Station, on every first Monday of the month between 11.00 a.m. and 1.00 p.m.
- c) The Applicant shall attend all the dates before the Trial Court unless precluded on medical reasons.
- d) The Applicant shall not tamper with the evidence and/or pressurize the prosecution witnesses.

7 Application is allowed in the aforesaid terms.

(A.S. GADKARI, J.)