

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

CRIMINAL BAIL APPLICATION NO. 1285 OF 2018

Dashrath Kamlu Mange

... Applicant

Vs.

State of Maharashtra

... Respondent

...

Mr. Rajiv Patil, Sr. Counsel I/by Mr. Hasan Patel for the applicant.

Mrs. G.P. Mulekar, APP for the Respondent State.

...

CORAM : PRAKASH D. NAIK, J.

DATE : 3rd SEPTEMBER, 2018.

P.C.

1. This is an application for bail in connection with CR-I-67 of 2017 registered with Kasara Police Station, District Thane for the offences punishable under Sections, 302, 328, 323 read with 34 of Indian Penal Code.

2. First information report was lodged on 12th October, 2017. It is alleged that on 29th September, 2017 the deceased was assaulted by the accused suspecting that he had committed theft. It is alleged that the applicant gave vadapav to the deceased. Inquiries were made with deceased Somnath Khandke as to how much amount he had stolen from cash counter. The applicant and his brother Kisan Mange assaulted Somath (deceased). They took him to police chowki. The complainant was present near the place

of incident I.e Dhaba of accused. Somnath complained of dizzying. Somnath was shouting that accused complained of dizziness. Somnath was shouting that accused assaulted him and he is feeling uneasy after eating Vadapav. He was taken to hospital. He was declared dead. ADR was registered. Post Martom report was conducted. Thereafter FIR was lodged on 12th October, 2017.

3. Learned advocate for the applicant submitted that incident had occurred on 29th September, 2017 whereas FIR was lodged belatedly on 12th October, 2017. The allegations that the accused had given Vadapava to the deceased were made for the first time in the First Information Report. Complainant is the uncle of deceased. It is submitted that FIR is based on concocted version of the complainant. It is submitted that there is no incriminating and corroborative evidence to establish that the applicant had given Vadapav containing poison to deceased. The story as narrated in the complaint is appears to be afterthought. The alleged incident had occurred in the morning at about 8.30 a.m. when Somnath was at home, he complained of dizziness in the evening. The brother of the applicant has been released on bail.

4. Learned APP submitted that the case of the complainant is

fortified by the Chemical Analysis report which clearly mentions that the result of analysis shows that there was insecticide phorate exhibits forwarded for analysis. It is of the same level as that found in fatal poisoning cases involving phorate. It is submitted that the complainant has no reason to falsely implicate the applicant and the FIR was lodged prior to the opinion of the expert. It is submitted that the FIR was lodged after the family of the deceased had performed the rituals. The first information report clearly mentions that the applicant had given Vadapav and the symptoms shown deceased, pursuant to consumption and CA report establishes the crime.

5. On perusal of the chargesheet, it is apparent that the incident had occurred at about 8.30 a.m. on 29th September, 2017. The First Information Report was lodged on 12th October, 2017. In pursuant to that incident, ADR was recorded. Till 12th October, 2017, nothing was disclosed to the Investigating machinery that the accused had given Vadapav containing insecticide to the deceased. The allegations are appearing for the first time when FIR was lodged on 12th October, 2017. The investigating machinery has not collected independent evidence to corroborate the fact that the Vadapav given to the deceased by applicant

containing poison. Nothing was recovered from the place of incident. As per the panchanama recorded by the police, regarding spot of incident, nothing incriminating was found. Prosecution also could not point out whether history of poisoning was reported at the time of medical examination of the deceased. Post Mortem report shows that Somnath had received simple injury I.e abrasion forehead and contusion on left ear. The other injuries I.e column No. XVII, 1, 4, 5, 6 to 9 were stated to be more than seven days old.

6. Taking into consideration the aforesaid circumstances, the applicant is in custody from 12th October, 2017, the investigation is completed and chartersheet has been filed, the applicant can be granted bail.

ORDER

- i) Criminal Bail Application No. 1285 of 2018 is allowed.
- ii) The applicant is directed to be released on bail in connection with C.R. No. CR-I-67 of 2017 registered with Kasara Police Station on furnishing P.R. Bond of Rs.20,000/- (Rs. Twenty Thousand only) with one or more sureties in the like amount;
- iii) The applicant shall attend Kasara Police Station once in a month on first Saturday between 10 a.m. to 12 noon till further

order;

iv) The applicant shall not tamper with the evidence and/or influence the prosecution witnesses.

v) The application stands disposed off.

Sachidanand
Kuttan Nair

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by Sachidanand
Kuttan Nair
Date:
2018.09.05
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(PRAKASH D. NAIK, J.)