

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

CRIMINAL BAIL APAPPLICATION NO. 1345 OF 2018

Mohammad Yusuf Mulla @ Subhan	... Applicant
Vs.	
State of Maharashtra	... Respondent

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Mr. Amit Mane for the applicant.
Mr. Arfan Sait, APP for the Respondent-State.
Mr. Girde, PSI, Mira Road, Police Station is present.

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**CORAM : PRAKASH D. NAIK, J.
DATE : 19th OCTOBER, 2018.**

P.C.

1. This is an application for bail in connection with C.R. No. I-241 of 2017 registered with Meera Road Police Station, District Thane on 5th August, 2017 for offence punishable under Sections 302, 201 read with 34 of Indian Penal Code. The applicant was arrested on 5th August, 2017. Investigation is completed and chargesheet has been filed. Case is pending before the appropriate court vide Sessions Case No. 63 of 2018.

2. Prosecution case is that on information body of unknown person was recovered from the drainage at the spot of incident on 30th July, 2017 by the police. On inquiry police found that the deceased is one Mr. Iqbal @ Yunus who used to work as electrician

and had no fix place of residence. Deceased was the friend of accused Nos.1 and 2. On 15th July, 2017 while deceased alongwith his friends were consuming liquor quarrel took place between them due to issue of money. As a result of that accused No.1 assaulted him by giving blow of stone on his head and accused No. 2 also assaulted him with stone. Body of the deceased was thrown in the drainage.

3. Prosecution case is based on the circumstantial evidence. There is no eye witness to the incident. The applicant is involved on the basis of statements of two witnesses which according to the prosecution depicts evidence in the nature of last seen together.

4. Learned counsel for the applicant submitted that identity of the dead body recovered by the police is not established as that of the deceased Iqbal @ Yusnu. It is further submitted that except the purported statement of two witnesses of last seen together, there is no other corroborative evidence to show the involvement of the applicant in the said crime. It is submitted that in the absence of cogent evidence and without establishing of the identity of the deceased, theory of last seen together cannot be accepted. Although, there is recovery of clothes at the instance of the applicant, there were no blood stains at the clothes. It is therefore

submitted that bail may be granted to the applicant.

5. On the contrary, learned APP submitted identity of the deceased was established. When the body was found in the drainage identity card was found with the deceased. The police then contacted the person in whose name the identity card was printed. On inquiries with the contractor Akram Ahmed whose statement was recorded on 7th August, 2017 it was revealed that accused No.1 and deceased were working together. Prosecution is relies upon the statement of Rukasana Mullah. She is the wife of the applicant. It is submitted that the said witness has stated that the accused and the deceased were seen together on 15th July, 2017 and thereafter the deceased was found missing which shows that he was murdered by the accused. Learned APP further submitted that during the course of investigation, clothes of the applicant were recovered at his instance. However, the same were washed and therefore there were no blood stains on the said clothes. Learned counsel for the applicant also submitted that the statement of the contractor is vague and it cannot be said that he has given any link with regards to the identify of the deceased.

6. I have perused the chargesheet. There is no direct evidence. There is no eye witness to the incident. Thus, the entire case of

the prosecution is based on circumstantial evidence. The statement of the wife of the applicant refers to the presence of the deceased with the accused. Contractor has referred to the fact that the accused No.1 and deceased were working together on 15th July, 2017. They left together. Prosecution is therefore relying upon this circumstance to establish that the Accused No.1 and deceased were seen together and followed by the statement of the wife of the applicant. There is no strong and cogent evidence to show the involvement of the applicant in the crime beyond the evidence as stated herein above. Admittedly, there is no witness to show that the applicant had assaulted the deceased and the said inference was drawn on the basis of the statement of the accused. The recovery of the clothes does not appears to be connecting accused with offence. Applicant is in custody from 5th August, 2017. There are no criminal antecedents against the applicant. Chargesheet has been filed. Taking into aforesaid circumstances, the case for grant of bail is made out.

ORDER

- i. Criminal Bail Application is allowed;
- ii. Applicant is directed to be released on bail in C.R. No. I-241 of 2017 registered with Meera Road Police Station, District Thane

on furnishing P.R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount;

iii. Applicant shall report concerned Police Station once in a month on first Saturday between 10 a.m. to 12 noon till conclusion of trial;

iv. Applicant shall not tamper with the evidence and/or influence the prosecution witness;

v. Applicant shall attend the trial Court during the course of hearing of the case regularly, unless exempted by the Court.

vi. Bail Application stands disposed off.

(PRAKASH D. NAIK, J.)

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Sachidanand
Kuttan Nair
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