

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1394 OF 2018

Tausif Raza @ Kaliya Alauddin Ansari,
Age 20 years, Occ.Nil, R/o.Zahid Seth Ka Gala,
Gupta Compound, Nala Paar, Bhiwandi,
District Thane (presently at Kalyan Jail)

Applicant

versus

The State of Maharashtra

Respondent

Mr.A.N.Pathan for applicant.

Mr.R.M.Pethe, APP, for State.

Mr.Digambar Tupkar, Bhoiwada Police Station, Bhiwandi, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 17th September 2018

PC :

1. This is an application for bail in CR No.I-118 of 2017 registered at Bhoiwada Police Station, Bhiwandi, District Thane for offences under Section 302 r/w Section 34 of Indian Penal Code. The applicant was arrested on 18th August 2017 and since then he is in custody.

2. The prosecution case in brief is that the complainant is working at power loom of his brother at Bhiwandi. He used to sleep at the power loom. On 6th August 2017 at about 11 pm, the complainant and his cousin went on motorcycle to the said loom to sleep. After parking their motorcycle, they went inside the loom. AT

about 1.30 a.m., the complainant got up to attend the nature's call. He heard someone's voice and hence he flashed his torch towards the spot. He found that one person was lying in injured condition. Thereafter with the help of his cousin information was given to police. The injured was taken to hospital where he was declared dead. The FIR was registered on 17th August 2018. On completing the investigation, charge sheet has been filed. The applicant preferred application for bail before the Sessions Court, which was rejected.

3. Learned advocate representing the applicant has submitted that there is no eye witness to the alleged incident. The prosecution case is based on circumstantial evidence. There is no strong evidence to connect the applicant to the crime. He is in custody from the date of arrest. There was no previous enmity between the deceased and the applicant. The dispute of deceased was with another accused who was sexually assaulted by the deceased. There is no motive for applicant to kill the deceased. There is no evidence of last seen together. The case of prosecution is that the knife was used by the co-accused and the same was purportedly recovered at the instance of applicant.

4. Learned APP submitted that there is sufficient evidence against the applicant. The knife has been recovered at the instance of applicant. The post mortem report indicates that the deceased had sustained several injuries on his head and other parts of body, which corroborates the prosecution case that the deceased was assaulted by knife and since the said weapon was recovered at the instance of applicant, it will have to be inferred that the applicant has assaulted

the deceased by knife. It is further submitted that the evidence of witnesses indicate suspicious conduct of the applicant.

5. I have gone through the documents. The charge sheet has been filed against the applicant. The prosecution is relying on several statements and panchanama of recovery. Admittedly there is no eye witness to the incident. The statements of some of the witnesses indicate that other accused was in company of the deceased at the relevant time. However, they have not referred to the presence of the applicant. The statements also indicate that the deceased was consuming drugs and after consumption he used to sexually assault young boys. The prosecution case also indicates that juvenile accused was sexually assaulted by the deceased and pursuant to that he was assaulted. The investigating machinery had arrested three persons. One of them is juvenile. There is recovery of knife at the instance of applicant, however, the prosecution proceeds on the basis that the knife was used by the juvenile which was recovered at the instance of applicant. The statement of wife of the deceased also states that the deceased was in habit of consuming Ganja and used to sexually exploit young boys after consuming the same. There is no direct evidence to implicate the applicant. The prosecution case is based on circumstantial evidence. The evidence of the witnesses qua last seen together, also does not support the prosecution case. The applicant is in custody from the date of arrest and further detention is not necessary. According to learned advocate for applicant, there are no reported criminal antecedents against applicant.

6. In the circumstances, I pass following order :

ORDER

- (i) Criminal Bail Application No.1394 of 2018 is allowed and disposed off;
- (ii) The applicant is directed to be released on bail in connection with CR No.I-118 of 2017 registered with Bhoiwada Police Station, Bhiwandi, on furnishing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- (iii) The applicant shall attend the investigating officer of Bhoiwada Police Station, Bhiwandi once in a month on every first Saturday between 10 am and 12 noon till further orders;
- (iv) The applicant shall not tamper with evidence.

(PRAKASH D. NAIK, J.)

MST