

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

BAIL APPLICATION NO.1704 OF 2018

Nizam @ Nizamuddin Phul Mohd. ...Applicant
Ansari

Versus

The State of Maharashtra ...Respondent

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Mr. Satyavrat Joshi with Mr. Nitesh Mohite for the Applicant.
Ms Pallavi N. Dabholkar, APP for the Respondent -State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 11th OCTOBER, 2018.

P.C.:-

This is an application under Section 439 of the Cr.P.C. filed by the aforesaid Applicant, who has been arrested in Crime No.115 of 2018 registered with Shikrapur Police Station, Pune (rural), for offences punishable under Section 302 r/w. 34 of the Indian Penal Code, 1860.

2. Mr. Satyavrat Joshi, the learned counsel for the Applicant submits that there is no priam facie material on record showing involvement of the Applicant in causing fatal injury to the deceased -Ghansham Patel @ Sharmaji. He submits that the case of the prosecution is that the said injury was inflicted by the co-accused

Ravindra and not by the present Applicant. He submits that the Applicant is in custody since 23.2.2018 and considering the nature of allegations as against this Applicant, his presence is not required in custody.

3. Ms Pallavi N. Dabholkar, the learned APP submits that statements of Jagdish Kachare and Deepak Kumawant prima facie prove the presence of the Applicant at the place of the incident. She further submits that the statements of these two witnesses further indicate that there was an altercation between the deceased and the Applicant and the other two accused. She submits that blood stained clothes have been recovered as per the disclosure statement made by the Applicant under Section 27 of the Evidence Act. She submits that above said material prima facie shows the involvement of the Applicant in commission of the said crime.

4. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

5. The aforesaid crime was registered pursuant to the FIR lodged by Rajendra Shelke, who had taken contract of construction of

a building at Shikrapur. Nagendra as well as the deceased -Ghansham Patel, Ravindra and Nizam were working at the construction site. On 22.2.2018, at about 10.00 p.m., when the first informant had gone to the third floor of the said building, he saw Ghansham Patel lying in a pool of blood. He had sustained head injury and was motionless. He has further stated that Ravindra, Nagendra and Nizam were not found at the construction site. He therefore, called Sharad Dhaybar, the owner of the building.

6. The first informant has further stated that said Ravindra called him and told that they had a fight with the deceased and that they had assaulted the deceased. The first informant with the help of Ashok Shelke, Deepak Kumawat and Sharad Dhaybar took the deceased to the hospital, where he was declared dead. The post mortem report prima facie indicated that the deceased had sustained contused lacerated wound on occipital region in mid-line. There were corresponding internal injuries. There was linear fracture of skull over occipital bone. The Medical Officer opined that death was due to cardio-respiratory arrest due to head injury. The material on record prima facie indicates that death of said Ghansham Patel was homicidal.

7. The statement of Deepak Kumawat, prima facie reveals that on 22.2.2018 at about 9.45 p.m. he had received a phone call from Contractor Rajendra Shelke that the Applicant and the co-accused Nagendra, Ravindra and the deceased were fighting with each other on the third floor of the building, which was under construction. The Contractor had requested him to go to the site and sort out the matter. When he proceeded to the building he saw the deceased-Ghansham lying on the floor and that he had sustained head injury. The co-accused Ravindra was present at the place of the incident. When he questioned Ravindra, he told him about the altercation between him, the deceased and the other co-accused. The deceased thereafter abused him. The co-accused had told him that he had banged the head of the deceased on the wall and as a result, he had sustained injuries and was unconscious. This witness has stated that he told the co-accused -Nagendra to get a vehicle to take the deceased to the hospital.

8. The statement of Jagdish Kachare, also prima facie reveals that on 22.2.2018 there was a quarrel between the Applicant, both the co-accused and the deceased. The statement of this witness also prima facie reveals that the co-accused Ravindra banged head of the deceased on a wall and Nagendra had hit him with a wooden log.

9. The statements of Deepak Kumawat and Jagdish Kachare do not prima facie indicate that the present Applicant was involved in inflicting injuries on said Ghansham Patel. The only incriminating material as against the Applicant is recovery of blood stained clothes. It has to be borne in mind that the Applicant was present at the place of the incident and that he alongwith other co-accused and the deceased were staying on the 3rd floor of the building. The mere fact that the clothes of the Applicant were stained with blood would not prima facie link the Applicant with the crime.

10. The Applicant is in custody since 23.2.2018. The investigation is concluded and the charge sheet has already been filed. Presence of the Applicant is therefore not required in custody for the purpose of interrogation. The Applicant has no criminal antecedents.

11. Considering all the above facts and circumstances and particularly the role attributed to the Applicant in the offence, in my considered view the Applicant is entitled for bail. Hence, the application is allowed on following terms and conditions:-

(i) The Applicant, who has been arrested in Crime

No.115 of 2018 registered with Shikrapur Police Station, Pune (rural), shall be released on bail on furnishing bail bonds of Rs.50,000/- with one or two solvent local sureties in the like amount.

- (ii) The Applicant shall report to the Investigation Officer and in the absence of the Investigation Officer to the Senior P.I. of the Shikrapur Police Station on first and third Monday of every month until further orders.
- (iii) The Applicant shall furnish his permanent as well as temporary address, if any, and his contact details to the concerned Investigation Officer.
- (iv) The Applicant shall not change his residential address without prior intimation to the concerned Investigation Officer.
- (v) The Applicant shall not interfere with the witnesses in any manner.

(SMT. ANUJA PRABHUDESSAI, J.)