

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1911 OF 2018

1. Noor Mohammad Abdul Khalid Hasami,
Age 42 years,
2. Mohammad Shrif Bakridi Sayyed,
Age 25 years,
3. Mohd.Rafique Noor Mohammed Shaikh,
Age 35 years,
All R/o.Habib Faun Dry, 90 Feet Road,
Azad Nagar Compound, Gandhi Nagar,
Kandivali (W), Mumbai-67.
4. Aslam Rauf Sayyad, Age 25 years,
Age 25 years, R/o.Room No.14,
Durga Samiti, Near Chandrika Hotel,
90 Ft.road, Ganesh Nagar, Azad
Nagar Compound, Kandivali (W), Mumbai.

Applicants

versus

The State of Maharashtra

Respondent

Mr.Satish Talekar I/by Takelar & Associates for applicants.
Mr.A.R.Kapadnis, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 5th September 2018

PC :

1. The applicants are arrested in CR No.446 of 2017 registered with Kandivali Police Station for offences under Sections 302 read with Section 34 of Indian Penal Code and offence under Section 37(1) r/w Section 135 of Maharashtra Police Act.

2. The applicants are arrested on 22nd October 2017. Since then they are in custody. The case of prosecution is that on 19th October

2017, the deceased Aalesh Krishnakumar Pandey left house at 9 p.m. and told his brother, who is complainant, that he will come back on the next day. On 20th October 2017, one Aarti Damle telephoned the complainant that the deceased is lying in a lane at Laljipada and he is being taken to Shatabdi Hospital. The complainant then reached the hospital. After treatment the doctors discharged the injured. On 21st October 2017 the deceased was declared dead.

3. There are two eye witnesses. They have stated that the deceased was found committing theft and in the process he fell down. Thereafter he was assaulted by accused by bamboo sticks. The two witnesses have named the applicants as persons who assaulted the deceased.

4. Learned advocate for the applicant submitted that taking the prosecution case as it is, the case would not fall within the purview of Section 302 of IPC. At the most, it can be a case which may be tried for offence u/s 304(2) of IPC. The post mortem report does not indicate the cause of death. There are no criminal antecedents against applicants and they are working as labourers.

5. Learned APP submitted that there are two eye witnesses to the incident, who had attributed specific overt act to the applicants having assaulted the deceased. It is submitted that although the deceased had sustained injuries on account of fall during the act of committing theft, he was assaulted by the accused. It is submitted that there is recovery of bamboo sticks at the instance of applicants. The deceased had sustained about 23 injuries on account of assault.

6. Having heard both sides I have also perused the charge sheet. The prosecution case is that the deceased was allegedly found committing theft. He fell down in the process and thereafter he was assaulted by the accused by using bamboo sticks which were lying at the scene of offence. It is apparent that the deceased was treated in hospital and was discharged from hospital. After two days he succumbed to the injuries.

7. Prima facie it appears that there was no intention to commit the murder of deceased. There are no criminal antecedents against applicants. The deceased was being assaulted when it was noticed that he was trying to commit theft. It is true that the accused cannot take law in to their hand. The deceased was found committing theft, hence allegedly he was beaten by the applicants. Looking at the factual aspects and considering the fact that the applicants are in custody from 22nd October 2017 and the nature of role attributed to them and also considering the fact that the charge sheet is filed, the applicants can be granted bail on certain terms and conditions.

8. Hence, I pass following order :

ORDER

(i) Criminal Bail Application No.1911 of 2018 is allowed;

(ii) The applicants are directed to be released on bail in connection with CR No.446 of 2017 registered with Kandivali Police Station, on furnishing PR bond in the sum of Rs.15,000/- each with one or more sureties in the like amount;

(iii) The applicants shall report the investigating officer of Kandivali Police Station once in a month on first Friday between 10 am and 12 noon till further orders;

(iv) The applicants shall not tamper with the evidence.

(PRAKASH D. NAIK, J.)

MST