

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

BAIL APPLICATION NO.2035 OF 2018

Arjun Barikrao Jetithor	...Applicant
Versus	
The State of Maharashtra	...Respondent

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Mr. Aniket Nikam I/b. Mr. Aashish Satpute for the Applicant.
Mr. J.S. Lohokare, APP for the Respondent-State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 6th SEPTEMBER, 2018.

P.C.:-

This is an application under Section 439 of the Cr.P.C. filed by the aforesaid Applicant, who is facing trial in Sessions Case No.106 of 2018 on the file of the learned Additional Sessions Judge, Pune. The aforesaid case arises from C.R. No.592 of 2017 registered with Nigdi Police Station, District-Pune, for the offences punishable under Sections 201 and 302 r/w. 34 of the Indian Penal Code.

2. Heard Mr.Aniket Nikam, the learned counsel for the Applicant and Mrs. J.S. Lohokare, the learned APP for the Respondent-State. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

3. The aforesaid crime came to be registered pursuant to the FIR lodged by the father of the deceased Suraj Khambe. The case of the prosecution in brief is that the Applicant herein and his friend Suraj Nisargan committed murder of Suraj Khambe. Statements of the witnesses viz. Seema Vitkar prima facie reveals that she was earlier in love with the deceased-Suraj Khambe. Thereafter she developed friendly relations with the Applicant-Arjun Jetithor. During this time she also continued relationship with Suraj. She has claimed that Suraj had borrowed Rs.10,000/- from her.

4. On 24th October, 2017 while the witness Seems was having lunch with the Applicant-Arjun, she received a phone call from Suraj Khambe, at which time she told him to return her money. When the Applicant learnt that this witness had received a phone call from the deceased-Suraj Khambe, he was infuriated and left the hotel. Subsequently, the deceased-Suraj Khambe called her again and told her that he wanted to meet the Applicant and that he would clear the misunderstanding between them. The witness told the deceased not to contact the Applicant as he was infuriated.

5. The statement of this witness also prima facie reveals that

when she had conveyed the message to the Applicant he had refused to meet the deceased. However, subsequently on the same evening at about 6.20 p.m. she received a phone call from the deceased. He told her to come near the vacant plot near Bombay Selection Cloth Store alongwith the Applicant. Accordingly, she accompanied the Applicant to the said vacant plot. The deceased and his friend Uttam were at the place of the incident. Her statement prima facie indicates that initially the Applicant had told the deceased to return the money of witness Seema. The deceased was annoyed and thereafter he assaulted and abused the Applicant. In the meantime the Applicant called his friend co-accused Suraj Nisargan. The deceased questioned Suraj Nisargan as to whether he had come to assault him and thereafter slapped him. She has also alleged that when the deceased had started assaulting the Applicant, the co-accused Suraj Nisargan picked up a stone, which was lying at the place of the incident, and hit the deceased with the stone 3 to 4 times. Said Suraj Khambe sustained injuries and thereafter she with the help of the Applicant took him to the Hospital, where he was declared as dead.

6. Statement of the other eye witness Uttam Wadekar also prima facie reveals that the deceased had called the Applicant to the

place of the incident and that the deceased had assaulted the Applicant and Suraj Nisargan, who was called by the Applicant. The statement of this witness also prima facie reveals that when the deceased was assaulting the Applicant, the co-accused Suraj Nisargan picked up a stone lying at the place of the incident and had pelted the said stone on the head of Suraj Khambe and that he fell down and sustained injuries.

7. The material on record does not prima facie indicate that the Applicant had gone to the place of the incident with an intention of assaulting the deceased Suraj. On the contrary, the statements of both these witnesses prima facie indicate that it was the deceased, who had called the Applicant at the place of the incident and that he had assaulted the Applicant and his friend Suraj Nisargan. It was under these circumstances, that the co-accused Suraj Nisargan had picked up a stone from the place of the incident and hit it on the head of the deceased.

8. The above facts and circumstances and the nature of the allegations levelled against the Applicant, do not justify custody of the Applicant pending trial. The Applicant is a permanent resident of the State and there are no chances of the Applicant absconding and/or

thwarting the course of justice. Considering all the above facts and circumstances the application is allowed on the following terms and conditions:-

- (i) The Applicant shall be released on bail on furnishing bail bonds of Rs.50,000/- with one or two solvent sureties in the like amount to the satisfaction of the learned Additional Sessions Judge, Pune.
- (ii) The Applicant shall report to the Nigdi Police Station on first 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.

9. Suffice it to say that the above observations made whilst disposing of this application are prima facie and shall not be construed as an expression on merits of the matter.

(SMT. ANUJA PRABHUDESSAI, J.)