

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2071 OF 2018

Kalicharan Nandlal Rai, Age 28 years, R/o.Baragovind, Post Chakiya, Dist.Matihari, Bihar (presently lodged at Arthur Road Jail)	Applicant
versus	
The State of Maharashtra	Respondent

Mr.Amrish R. Salunkhe for applicant.
Mr.S.R.Agarkar, APP, for State.
Mr.Mukesh Dhage, API, Bhoiwada Police Station, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 28th November 2018

PC :

1. This is an application for bail in connection with CR No.127 of 2017 registered with Bhoiwada Police Station, Mumbai for offences punishable under Sections 325 and 302 of Indian Penal Code.

2. The prosecution case is that on 11th June 2017 the deceased came from Apna Deshi Bar and stood near pan shop. After some time the accused came there and for unknown reason the deceased was assaulted. It is alleged that the accused pushed the deceased which resulted in dashing his head on the tree and thereafter the accused assaulted the deceased again, which had resulted in injury to his head on the ground of dashing on the same tree. During the course of investigation, statements of witnesses were recorded. Learned counsel for applicant drew my attention to the statement of eye witness Shivaji @ Shiva recorded on 12th June 2017 which has

referred to the aforesaid facts. The applicant was arrested on 12th June 2017 and since then he is in custody. It is the contention of the advocate for applicant that taking the prosecution case as it is, there is no intention to commit murder and the required ingredients to constitute the offence of murder are completely absent. The applicant was not armed with weapon. He is in custody from the date of arrest. Investigation is completed and charge sheet is filed. There are no criminal antecedents against the applicant.

3. Per contra, learned APP states that there are several injuries on the head of deceased which were resulted on account of overt act attributed to the applicant. The injuries which were sustained by the victim has resulted in his death and therefore the case of prosecution clearly spells out the offence u/s 302 of IPC. It is further submitted that the deceased was assaulted for no reason and considering the manner in which he was assaulted, it will have to be conferred that the applicant had knowledge and intention that the same would result in death.

4. Having heard both sides I have also perused the documents on record. The alleged incident occurred on 11th June 2017. The motive of the crime is not clear. The applicant had initially pushed the accused which had resulted in tanking of his head on the tree. Thereafter apparently the accused has allegedly held collar of the deceased and shuffled him which had resulted in further injuries. I have perused the post mortem report and the certificate relating to cause of death. The provisional cause of death certificate indicate “Cranio Cerebral Injury due to Blunt Trauma (Unnatural)” to be the reason of death. The post mortem report prescribes the injuries in

the nature of lacerated wound on the forehead, over the back of scalp and abrasions. Learned APP submitted that the post mortem report also shows contusion over left lobe of cerebellum. It is pertinent to note that after the alleged incident of assault, the offence u/s 325 of IPC was registered and on account of death of the injured, the offence u/s 302 of IPC was registered. The reason for assault is not known. Apparently the incident appears to have happened on spur of moment. No weapon was used. In the circumstances, it is debatable whether Section 302 of IPC will be attracted in this case. At this stage it is not necessary to further evaluate the evidence as the trial is pending. However, prima facie, considering the role attributed to the applicant and also in the light of the circumstances that the applicant is in custody for a period of about one and half years and there are no reported criminal antecedents against him, case for grant of bail is made out.

5. Hence, I pass following order :

ORDER

- (i) Criminal Bail Application No.2071 of 2018 is allowed and disposed off;
- (ii) The applicant is directed to be released on bail in connection with CR No.127 of 2017 registered with Bhoiwada Police Station, Mumbai, on furnishing PR bond in the sum of Rs.25,000/- with one or more local surety in the like amount;
- (iii) The applicant shall report Bhoiwada Police Station once in a month on every first Friday between 10 am and 12 noon till further orders;
- (iv) The applicant shall not tamper with the evidence;

- (v) The applicant shall attend the Trial Court regularly on the dates of hearing, unless exempted by the Trial Court;
- (vi) The applicant shall furnish his permanent residence address to the investigating officer after he is released on bail.

(PRAKASH D. NAIK, J.)

MST