

Anand

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

BAIL APPLICATION NO. 2052 OF 2017

Khatija Ali D/o. Sayyed Ali .Applicant

Vs.

The State of Maharashtra & anr. .Respondents

Mr. R. P. Javanjal a/w. Mr. A. Gawand, Advocate, for the Applicant
Mrs. J. S. Lohokare, APP, for the Respondent Nos. 1 & 2 – State

CORAM : REVATI MOHITE DERE, J.

DATE : 19.03.2018

P.C.

. Heard learned counsel for the parties.

2. By this Application, the Applicant seeks her enlargement on bail in connection with C. R. No. 84 of 2017 registered with the Shahunagar Police Station, Mumbai, for the alleged offences punishable under Sections 302, 325 r/w 34 of the Indian Penal Code (for short 'IPC').

3. Learned counsel for the Applicant submits that the Applicant alongwith other co-accused is alleged to have assaulted Mohammed Sharif (deceased) with fist and kick blows, as Mohammed

Sharif, a drug addict had caused damage to the taxi of Janibabu alias Mustafa. He submits that taking the prosecution case as it stands, no offence as alleged under Section 302 of IPC is disclosed. He submits that no weapon was used in the commission of the offence and that the Applicant, a lady is in custody for the last one year.

4. Learned APP opposed the Application. Perused the papers.

5. According to the Complainant – Mohammed Arif Mohammed Rafiq Shaikh, brother of the deceased – Mohammed Sharif, the incident took place on 18.03.2017. The Complainant has alleged that his brother, Mohammed Sharif was addicted to drugs and that on 18.03.2017, his brother had caused damage to Janibabu alias Mustafa's car, as a result of which, there was a quarrel between the two. He has further alleged that in the evening at about 5.30 p. m., he was informed that there was a quarrel going on between his brother and the accused and hence, he went to the spot. He has stated that when he reached the spot, he saw Janibabu alias Mustafa, his son – Arif and his sister Rani alias Khatija (Applicant) assaulting his brother with fist and kick blows. He has stated that pursuant to the assault, his brother became unconscious and was taken to the hospital where he expired. A perusal

of column 17 of the Post Mortem Report shows that the deceased had sustained the following injuries :-

- “1) Contusion, 2 cm x 2 cm over middle of chest on right side.
- 2) Two abrasions with reddish scab, 1.5 cm x 1 cm and 2 cm x 1.5 cm over lateral aspect of right knee joint.
- 3) Abrasion with reddish scab, 4 cm x 0.8 cm over medial aspect of middle part of right leg.
- 4) Two abrasions with reddish scab, 2 cm x 2 cm and 1 cm x 0.3 cm over right scapular area.
- 5) Abrasion with dark brownish scab, 1.5 cm x 1 cm over lateral aspect of left knee joint.”

The cause of death is stated to be 'shock due to head injury associated with blunt trauma to abdomen', however samples were preserved for analysis. Admittedly, no weapon was used in the commission of the offence. The Applicant is a lady, who is in custody for the last one year. Investigation is complete and charge-sheet is filed. Whether or not the offence would be one punishable under Section 302 of IPC or a lesser offence is a matter, which will be decided by the trial Court.

6. Considering the aforesaid, the Application is allowed and

the Applicant is enlarged on bail on the following terms & conditions :-

ORDER

- (I) The Applicant be released on **cash bail** in the sum of **Rs. 25,000/-** for a period of six weeks;
- (ii) The Applicant shall thereafter furnish P. R. Bond in the sum of Rs. 25,000/- with one or two solvent sureties in the like amount, within a period of six weeks of her release on cash bail;
- (iii) The Applicant shall report to the investigating officer of the concerned police station on the **first Sunday of every month** between **10:00 a. m. to 11:00 a. m.** till the conclusion of the trial;
- (iv) The Applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;
- (v) The Applicant to cooperate with the conduct of the trial;
- (vi) The Applicant shall inform her latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station.

7. The Application is allowed in the aforesaid terms and is

accordingly disposed of.

All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)