

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2149 of 2018**

Mohd. Islam Ajimullah Chaudhari ...Applicant

Versus

The State of Maharashtra ...Respondent

.....

Mr. Nitin Sejpai with Mrs. Pooja Sejpai and Ms Akshara Desai for the Applicant.

Ms Pallavi N. Dabholkar, APP for the Respondent -State.

Mr. N.B. Kolhatkar, Sr.P.I., Uran Police Station, present.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 4th OCTOBER, 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.84 of 2018 pending before the learned Additional Sessions Judge, District Raigad at Alibag. The aforesaid case arises out of C.R. No.I-56 of 2018 registered with Uran Police Station, District-Navi Mumbai, for offence punishable under Sections 302 r/w. 34 of the Indian Penal Code, 1860.

2. Heard Mr. Nitin Sejpai, the learned counsel for the Applicant and Ms Pallavi Dabholkar, 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 was registered pursuant to the first information report lodged by one Prasad Dongare, Assistant Police Inspector, Uran Police Station. A perusal of the FIR and other material on record prima facie indicates that on 25.2.2018 between 9.00 p.m. to 10.00 p.m., Mantosh, had slept in the cabin of Trailer No.MH-46-F-6001, which was parked by the side of the road. The FIR prima facie reveals that there was a quarrel between the deceased-Harun and co-accused Mantosh. It is alleged that said Mantosh had kicked Harun, as a result of which deceased -Harun had fallen down from the said Trailer. The material on record prima facie indicates that even after his fall, said Mantosh had assaulted Harun. It is alleged that in the meantime the Applicant and two others came to the place of the incident and assaulted the deceased-Harun with kicks and blows.

4. Said Harun was admitted to the hospital on the same day and he expired on 12.3.2018. The post mortem report reveals that death of Harun was due to severe head injury. The records prima facie indicate that the Applicant had assaulted Harun by kicks and blows. There is nothing on record to indicate that the Applicant was armed with a weapon and that he had inflicted the fatal injury. The question

whether the Applicant had shared common intention and whether he was vicariously liable, as contemplated by Section 34 of the IPC, is a matter to be decided on merits.

5. The Applicant is stated to be a native of Uttar Pradesh. The learned counsel for the Applicant submits that the Applicant is otherwise residing at Panvel. He further submits that the Applicant will not change his residence at Panvel without prior intimation of the learned Sessions Judge, Raigad at Alibag. The statement is accepted.

6. Considering the above facts and circumstances, and the nature of allegations levelled against the Applicant, in my considered view this is a fit case for grant of bail. Hence, the following order:-

(i) The application is allowed.

(ii) The Applicant is ordered to be released on bail on furnishing bail bonds of Rs.50,000/- with two solvent sureties in the like amount, out of which one shall be a local surety.

(iii) The Applicant shall report to the Investigation Officer and/or Senior P.I. of the Uran Police Station on first Monday of every month between 11.00 a.m. to 2.00

p.m. until further orders

- (iv) The Applicant shall furnish his permanent as well as temporary address, if any, and his contact details to the concerned Investigation Officer.
- (v) The Applicant shall not change his residential address without prior intimation to the concerned Court.

(SMT. ANUJA PRABHUDESSAI, J.)

Megha
Shridhar
Parab

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by Megha
Shridhar Parab
Date:
2018.10.10
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