

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

BAIL APPLICATION NO.2178 OF 2018

Appaso @ Kumar Kallappa
Kumasage

...Applicant

Versus

The State of Maharashtra

...Respondent

.....

Mr. Kuldeep S. Patil with Ms Megha Bajoria for the Applicant.

Mr. S.R. Agarkar, APP for the Respondent -State.

Mr. S.A. Kamble, Asst. Police Constable, Sanjay Nagar Police Station,
District-Sangli, present.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 24th SEPTEMBER, 2018.

ORAL JUDGMENT:-

This is an application under Section 439 of the Cr.P.C. filed by the aforesaid Applicant, who has been arrested in C.R. No.135 of 2018 registered with Sanjay Nagar Police Station, District-Sangli, for offences punishable under Section 302 and 201 r/w. 34 of the Indian Penal Code, 1860.

2. Heard Mr. Kuldeep Patil, the learned counsel for the Applicant and Mr. S.R. Agarkar, 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 FIR lodged by Balkrishna Katkar, who was employed as a barman at New Ratna Delux Hotel at Miraj. The FIR reveals that on 17.7.2018 between 10 to 11 p.m., one Samadhan Mante was having drinks at the hotel. There was a quarrel between said Samadhan Mante and one bearded person, who has been subsequently identified as Jakir Ajmuddin Jamadar. The first informant and the other staff intervened and they took said Jakir out of the hotel and pulled down the shutter. Sometime later the first informant and Samadhan Mante also left the hotel. The first informant claims that while they were standing outside the hotel, Jakir Ajmuddin Jamadar came alongwith two other persons and that said Jakir Ajmuddin Jamadar inflicted several blows on Samadhan Mante by means of a sharp weapon.

4. It is to be noted that Jakir Ajmuddin Jamadar and his two associates have been arrested. It is not the case of the prosecution that the Applicant is either an assailant or that he had assisted the assailant in commission of the crime. The Applicant is stated to be the owner of the hotel, wherein the alleged incident took place. It is not in dispute that the Applicant was not present in the hotel or at the place of the

incident. The only allegation against the Applicant is that upon being informed about the incident he had instructed the Manager of the hotel to keep the dead body outside the hotel gate and on the basis of the said allegations the Applicant is alleged to have committed offence punishable under Section 201 of the IPC.

5. It is to be noted that the FIR prima facie reveals that after the incident of assault Samadhan Mante had fallen outside the hotel in a pool of blood. The first informant has claimed that rain water had accumulated in the passage and that the water mixed with blood had spread over the tiles. Hence, he with the help of the other staff of the hotel removed the body and kept it outside the hotel gate. One of them called the police and that they waited at the place of the incident till the police arrived.

6. The first information report does not prima facie indicate that the Applicant had given instructions to shift the body of Samadhan Mante outside the gate of the hotel. Even if it is assumed so, there is nothing to prima facie suspect that the Applicant had done so with an intention of destroying the evidence or screening the offender from legal punishment, which is an essential requisite to bring home an

offence under Section 201 of the IPC.

7. Furthermore, even if the case of the prosecution as regards involvement of the Applicant for offence under Section 201 of the IPC is taken at its face value, it has to be noted that the said offence is bailable. It need not be emphasised that the right to claim bail under section 436 of the Code in a bailable offence is an absolute and indefeasible right. In my considered view, neither the Investigation Officer nor the Magistrate before whom the Applicant was produced or the Judge before whom the bail application was filed had any power to seek custody, grant remand or deny bail. Suffice it to say that denial of bail in a bailable offence is a serious infringement of the fundamental right guaranteed under the constitution. Such an order is undoubtedly without jurisdiction and illegal.

8. Considering all the above facts and circumstances in my considered view the Applicant is entitled for bail. Hence, the following order:-

- (i) The Applicant is ordered to be released on bail on furnishing bail bonds of Rs.25,000/- with one or two sureties in the like amount to the satisfaction of the

concerned court.

- (ii) The Applicant shall furnish his permanent as well as temporary address, if any, and his contact details to the concerned Investigation Officer.
- (iii) The Applicant shall not change his residential address without prior intimation to the Investigation Officer.
- (iv) The Applicant shall not interfere with the witnesses in any manner.

(SMT. ANUJA PRABHUDESSAI, J.)

Megha
Shridhar
Parab

Digitally signed
by Megha
Shridhar Parab
Date:
2018.09.27
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