

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

BAIL APPLICATION NO. 2217 OF 2018

Vinay Motiram Tamhankar	... Applicant
Vs.	
State of Maharashtra	... Respondent

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Mr. Mohd. Umar Kazi for the applicant.
Mr. Arfan Sait, APP for the Respondent-State.

...

CORAM : PRAKASH D. NAIK, J.
DATE : 27th SEPTEMBER, 2018.

P.C.

1. Applicant is seeking bail in connection with CR. No.I-144 of 2018 registered with Kolsewadi Police Station for the offences punishable under Sections 302, 323, 504, 143, 147 and 149 of Indian Penal Code.
2. The case of the prosecution is that complainant resides in Shivam Housing Society, Chawl No.'C'. Room No.1, Hajimalang Road, Kalyan (East) alongwith her family. Accused (applicant) and his brother-in-law Narendra Advilkar also resides in the same chawl alongwith their respective family. The accused are owners of auto-rickshaw and they park their auto-rickshaw in front of the main gate of said chawl, causing inconvenience to the inhabitants

of chawl. Accused Narendra used to park his auto rickshaw at the main gate of the chawl and on that point, there used to be altercations between both the families. On 18th March, 2018, the complainant and his family were celebrating Gudhi Padva. The husband of the complainant requested accused/applicant not to park auto-rickshaw at the main gate to avoid inconvenience. Applicant/accused went away and came back at 8.25 p.m in the night and parked auto-rickshaw on the main gate. The complainant and her husband were was sitting at their stationary shop. When complainant's husband was entering in his house, applicant started abusing him and assaulting complainant's husband with fist and kick blows. Applicant dragged the victim Sandesh inside the chawl area upto the house of Manisha Gosavi. At that time, the brother-in-law of applicant Narendra, wife of applicant Janhvi and wife of Narendra alongwith Tushar Advilkar arrived there and assaulted the deceased. The complainant tried to intervene and at that time she was assaulted. Accused Narendra throttled the neck of victim and they pressed him at window grill and applicant and other co-accused caught hold the victim and beat him with fists blows and kicks. The victim became unconscious and fell down on the ground, but accused continued

to assault him. Quarrel was pacified by the persons residing in the chawl who gathered on spot. All accused fled away and injured victim was brought to Metro Hospital where doctor declared him dead. Applicant and other accused were arrested on the same day i.e 18th March, 2018.

3. Learned counsel for the applicant submitted that there is no intention to commit the offence under Section 302 of Indian Penal Code. The applicant has been attributed the role of fist and kick blows to the victim. The other co accused are granted bail by the Sessions Court. The applicant is entitled for parity for grant of bail. It is further submitted that application of the applicant was rejected by the Sessions Court on the ground that he has initiated the quarrel and assaulted the victim by fist and kick blows.

4. Learned APP submitted that the role of the applicant can be distinguished from the persons who were granted bail. Learned APP pointed out the contents of the First Information Report and submits that the applicant and other accused were responsible for death of victim. The victim was throttled and all accused pressed him at window grill. Applicant and other accused to whom the role of throttling victim is attributed are clearly responsible for causing death of the deceased. The accused did not leave the

victim till he became unconcious and fell down on the ground. Applicant is a person who initiated the quarrel. It is also submitted that cause of the incident is parking of auto-rickshaw. The applicant who again picked up the quarrel which was ultimated resulted in death of victim. The role of persons who were granted bail is different. The opinion regarding cause of death in certificate issued by the Civil Surgeon of J.J. Hospital shows that deceased had died due to asphyxia on account of strangulation with compression of chest (unnatural). It is therefore submitted that application for bail be rejected.

5. Having heard both sides. I have gone through the documents which form part of the chargesheet. There used to be quarrel between both sides on account of parking of auto-rickshaw. On the date of incident, the applicant was informed by the victim not to park the auto rickshaw, as it was causing inconvenience to the family of the complainant. Applicant went away and came back in the night and parked the auto-rickshaw on the main gate. When complainant was passing towards his house, applicant started abusing him and on objecting for the same, he started beating with fists and kick blows. Thereafter incident has narrated herein above had occurred. After going through the

statement of the witnesses and analysing the manner in which the incident had taken place it can be seen that incident occurred at spur of moment. The deceased has been assaulted by the applicant and other family members. Applicant is one of the person who caught hold the deceased and gave kick blows. Applicant and others accosted deceased assaulted him. One of them caught neck of deceased. The other persons who were attributed the role of assaulting the deceased by fist and kick blows and allegedly caught hold of the victim were granted bail by the Sessions. The distinction was drawn while rejecting application of applicant on the ground that he is the person who has caused to initiate the quarrel followed by assault.

6. There may not be intention to kill the victim qua applicant. The incident is not apparently pre-planned. Investigation is completed and chargesheet has been filed. There is no need of further detention of the applicant. There are no criminal antecedents against the applicant. In the circumstances, bail can be granted on certain conditions. Hence, I pass the following order.

ORDER

- i) Criminal Bail Application is allowed.
- ii) The applicant is directed to be released on bail in connection with C.R. No. 144 of 2018 registered with Kolsewadi Police Station on furnishing P.R. Bond of Rs.20,000/- with one or more sureties in the like amount;
- iii) The applicant shall attend Kolsewadi Police Station once in a month on first Saturday between 10 a.m. to 12 noon till further order;
- iv) The applicant shall attend the trial Court on the date of hearing unless exempted by the trial Court.
- v) The applicant shall not tamper with the evidence and/or influence the prosecution witnesses.
- vi) The application stands disposed off.

(PRAKASH D. NAIK, J.)

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