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

CRIMINAL BAIL APPLICATION NO.2476 OF 2017

Halimunnissa Shafiq Khan

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr.Ganesh Rangayya, for the Applicant.

Ms.A.A.Takalkar, A.P.P for the Respondent-State.

Sr.P.I-Milind S. Gadankush, Protection Branch.

CORAM : REVATI MOHITE DERE, J.

DATE : 2nd APRIL, 2018

P.C. :

1. Heard learned counsel for the parties.
2. By this application, the Applicant seeks her enlargement on bail in connection with C.R.No.66 of 2017 registered with the Shahu Nagar Police Station, Mumbai, for the alleged offences punishable under Sections 302, 326 of the Indian Penal Code.

3. Learned Counsel for the applicant submitted that taking the prosecution case as it stands, no offence as alleged under Section 302 of the Indian Penal Code is disclosed and that the offence, if any, would be a lesser offence. He submitted that the applicant had also sustained grievous injuries in the said incident.

4. Learned APP opposed the application.

5. Perused the papers. The First Informant is PSI – Satish Kadam. He has lodged a complaint/FIR, as against unknown persons, alleging offences punishable under Sections 302, 326 of the Indian Penal Code. He has stated that during investigation, he learnt that some unknown person had assaulted the deceased – Shafiq Khan and the applicant with a bottle or a sharp weapon. According to the complainant, he received a call from the Sion Hospital on 24th February, 2017 at about 7.55 a.m., stating that Shafiq Khan (deceased) was found unconscious at about 6.30 a.m., and was brought to the hospital by his son – Nafish Khan, for medical treatment and was declared to be dead. During investigation, the applicant, i.e. wife of the deceased came to be arrested. It is alleged by the prosecution, that

the applicant assaulted Shafiq Khan, her husband with a tile on his head. The applicant has also sustained severe head injuries which are grievous in nature. Although, the applicant had given history of an alleged assault by unknown persons, when she was admitted to the hospital, there is an extra judicial confession made by the applicant to the Doctor and to the nurse, who treated the applicant. From the said extra judicial confession, it appears that a quarrel ensued between the applicant and her husband (deceased - Shafiq Khan) on 23rd February, 2017 and in the said quarrel, deceased – Shafiq assaulted the applicant on her head. A perusal of the injury certificate of the applicant shows that the Applicant had sustained two grievous injuries, one over left parieto-temp region (3 CLWs') and one on the right parietal region. It appears that in the said extra judicial confession, the applicant had disclosed that pursuant to the assault on her, by her husband (deceased – Shafiq), she assaulted the deceased with a tile, which was lying on the spot. The applicant is in custody since 1st March, 2017. Investigation is complete and charge-sheet is filed.

6. In the facts of the case, considering the nature of allegations, qua the applicant, the application is allowed and the applicant is enlarged

on bail on the following terms and conditions:-

ORDER

i) The Applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.20,000/- with one or two sureties in the like amount;

ii) The Applicant shall not tamper with the evidence or attempt to influence/contact the complainant, witnesses or any person concerned with the case;

iii) The Applicant shall co-operate in the conduct of the trial and shall attend the Court on every date of hearing, except in exceptional circumstances;

iv) If there are 2 consecutive defaults in appearing before the trial Court, the prosecution will be at liberty to apply for cancellation of Applicant's bail;

7. The Application is allowed and disposed of in above terms.

8. It is made clear, that the observations made herein are *prima facie* and are confined to this application and the learned Judge to decide the case on its own merits, uninfluenced by the observations made herein.

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

(REVATI MOHITE DERE, J.)