

Anand

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

BAIL APPLICATION NO. 30 OF 2019

Nisar Anwar Shaikh .Applicant

Vs.

The State of Maharashtra .Respondent

Mr. Sandeep Mishra a/w Mr. Prakash Mishra, Advocate, for the Applicant

Mr. A. R. Kapadnis, APP, for the Respondent – State

Mr. Shinde, API, Mumbra Police Station, Thane present

CORAM : REVATI MOHITE DERE, J.

DATE : 03.07.2019

P.C.

. Heard learned counsel for the parties.

2. By this Application, the Applicant seeks his enlargement on bail in connection with C. R. No. I-342 of 2018 registered with the Mumbra Police Station, District – Thane, for the alleged offences punishable under Sections 302, 323, 324, 504, 506 r/w 34 of the Indian Penal Code.

3. Perused the papers. According to the prosecution, the

incident took place on 01.07.2018 at around 12.30 to 1.00 p. m., on the 4th floor of Muktabai building, Charnipada, Kausa, Mumbra. It is alleged by the prosecution, that the Applicant alongwith Wasim and Zaid went to the Complainant's house and were alleging that the Complainant's brother – Abdul Khalid had sexually assaulted co-accused Wasim's niece, aged 8 years. It is alleged that Wasim, Zaid and the Applicant started abusing and assaulting Abdul Khalid with bamboo sticks. According to the prosecution, when the Complainant's father intervened in the quarrel and tried to rescue Abdul, co-accused – Wasim, the Applicant and Zaid pushed the Complainant's father, as a result of which he fell on the net and thereafter, on the ground. Learned counsel for the Applicant submitted that taking the prosecution as it stands, no offence punishable under Section 302 of the Indian Penal Code is disclosed qua the Applicant. He submits that there was no intention to kill the deceased – Yunus Ali Sayyed much less to assault him. He submitted that because the safety net collapsed, the deceased fell down between 3rd and 4th floor and thereafter, on the ground. A perusal of the statements of the eye witnesses show, that when Abdul Khalid was being assaulted, his

father intervened, pursuant to which the accused pushed the father, as a result of which he fell on the net and thereafter on the cement slab and then on the ground. Whether or not the offence would be one punishable under Section 302 of the Indian Penal Code or lesser offence, is a matter which will be decided by the trial Court. The Applicant is in custody since August, 2018. Prima facie, the Applicant had no motive to assault the deceased much less cause his death. The Applicant has no antecedents.

4. Considering the aforesaid, the Application is allowed and the Applicant is enlarged on bail on the following terms & conditions :-

ORDER

(i) The Applicant be enlarged on bail, on executing P. R. Bond in the sum of **Rs. 25,000/-** with one or two local sureties in the like amount;

(ii) The Applicant shall report to the investigating officer of the concerned police station on the first Monday of every month between 10.00 a. m. and 11.00 a. m. till the conclusion of the trial;

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

(iv) The Applicant shall inform his 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;

(v) The Applicant to file an undertaking with regard to Clauses (ii) to (iv) in the trial Court within two weeks of his release;

(vi) The Applicant to cooperate with the conduct of the trial.

5. The Application is allowed in the aforesaid terms and is accordingly disposed of.

6. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations

made in this order.

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

(REVATI MOHITE DERE, J.)