

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.299 OF 2019

Nagesh Kumaraya Kodam, Age 39 years,
Occ.Business, R./o.Room No.101,
B-Wing, 1st Floor, V.O.C. Tower,
Near Kamraj School, 90 ft. road,
Dharavi, Mumbai-400 097.

Applicant

versus

The State of Maharashtra

Respondent

Mr.Ashok P. Mundargi, Senior Advocate, I/hy Mr.Pankaj Purway for
applicant.

Mrs.G.P.Mulekar, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 14th February 2019

PC :

1. This is an application for bail in CR No.376 of 2018 registered with Dharavi Police Station for offences under Section 302 r/w Section 34 of Indian Penal Code.

2. The prosecution case is that on 21st September 2018 at about 6 pm the first informant received a call from his cousin that there was quarrel and fight between his brother Vinod and Nagesh and that Vinod is unconscious. The first informant reached to Dharavi Police Station. After registration of FIR, statement of witnesses were recorded. The applicant was arrested on 21st September 2018. the statements of witnesses Smt.Sonia Grace Nadar and Smt.Deepa Nadar were recorded on 21st September 2018. They have stated that the accused were driving motorcycle. The deceased came across

from front side which had resulted collusion. There was a quarrel between them. He was assaulted by the applicant by fist blows. Blows were given on chest and private part. The statements of both the witnesses were identical. It is also alleged that the co-accused who was pillion rider had caught hold of the deceased while the applicant had assaulted by fist blows. The statement of witness Anwar Shaikh was recorded. He had stated that the deceased was abusing the applicant in the name of his mother repeatedly and at that time he was assaulted by applicant by fist blows. The said witness has not referred to any blow given on the private part of the deceased by applicant. The post mortem was conducted. The said report also does not indicate that there was any injury on the private part of deceased. However, the report refers to abrasions over the body of deceased. The opinion as to cause of death indicate that opinion is reserved, however, there is evidence of abdominal trauma.

3. Learned counsel for applicant submitted that the co-accused has been granted bail. Taking the prosecution case as it is, the case would not fall within the purview of Section 302 of Indian Penal Code. The applicant has no criminal antecedents. The incident had occurred at the spur of moment.

4. Learned APP submitted that there are eye witnesses to the incident who have referred to the role play by applicant in assaulting the deceased by fist blows. As continuous blows were given to the deceased, he had succumbed to the injuries. Learned APP relied upon injuries reflected in the post mortem report.

5. As stated above, the incident had occurred at the spur of moment. There was minor accident while driving the vehicle. The statement of one of the witness also indicate that the deceased was abusing the applicant. No weapon is used in commission of crime. The deceased was assaulted by fist blows. Prima facie it does not indicate that there was intention to commit murder. The investigation is completed and charge sheet is filed. Hence, case for grant of bail is made out. Hence, I pass following order :

ORDER

- (i) Criminal Bail Application No.299 of 2019 is allowed and disposed off;
- (ii) The applicant is directed to be released on bail in connection with CR No.376 of 2018 registered with Dharavi Police Station, on furnishing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- (iii) The applicant shall attend Dharavi Police Station once in a month on every first Friday between 11 am and 1 pm till further orders;
- (iv) The applicant shall not tamper with evidence and shall attend Trial Court proceedings regularly, unless exempted for reason by Trial Court;
- (v) Observations in this order are prima facie for grant of bail and the Trial Court shall not be influenced by the same during trial.

(PRAKASH D. NAIK, J.)