IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1572 OF 2019

1 Mehtab @ Javed Gafar Ali Shaikh

2 Naushadali Gafarali Shaikh ...Applicants

Versus

The State of Maharashtra ...Respondent

Mr. Sudeep Pasbola a/w Mr. Karl Rustom Khan I/b Mr. Prajyot Shrivastav for the Applicants

Ms. Veera Shinde, A.P.P for the Respondent-State

PI Mr. Pradeep Vasant More from Kasturba Marg Police Station, Mumbai, is present.

CORAM : REVATI MOHITE DERE, J.
MONDAY, 15th JULY 2019

P.C. :

1 Heard learned counsel for the parties.

2 By this application, the applicants seek their enlargement on bail in connection with C.R. No. 226 of 2018 registered with the Kasturba Marg Police Station, Mumbai, for the alleged offence punishable under Section 302 r/w 34 of the Indian Penal Code.

3 Perused the papers. According to the prosecution, the incident took on 30th April 2018 at about 7-7:30 p.m. According to the witnesses, the deceased-Sanjay Patwa was under the influence of alcohol prior to the incident. It is alleged by one of the witness-Salman Shaikh that Sanjay Patwa (deceased) had gone out of the garage, had consumed alcohol and on his return, started abusing applicant No. 2 at around 7:00 p.m. He has further stated that Sanjay Patwa had thrown oil in the garage and was about to light a matchstick and set the garage on fire, however, applicant No.2 intervened and there was some physical quarrel between two of them. He has stated that the applicant No. 1 intervened in the quarrel, pursuant to which, Sanjay Patwa started abusing applicant No. 1. It is alleged that pursuant thereto, the applicants assaulted Sanjay Patwa. According to the witness-Salman, he intervened in the said quarrel and pulled out the rod, which was in the applicant No.1's hand. He has further alleged that after some time again, he heard a quarrel taking place between the applicants and Sanjay Patwa, pursuant to which, the neighbour-Kiran and his friend entered the garage. He has stated that he too entered the garage and at that time, he saw that applicant No. 2 had an iron tommy in his hand, which his

friend-Kiran removed from applicant No. 2's hand. He has stated that his friend-Kiran tried to stop the quarrel between them and explained Sanjay Patwa, pursuant to which, the quarrel settled down. He has stated that after some time, Sanjay Patwa became unconscious, pursuant to which, his wife, with the help of applicant No. 2 and the owner of the garage-Dayashankar Sinh, took Sanjay Patwa to Shatabdi Hospital, where he was declared dead.

4 It appears that the applicants and the deceased were working together in a garage and that there was some dispute with regard to the rent of the said garage. It also appears that incident took place on the spur of moment, as is stated by the witnesses. A perusal of the post-mortem report shows that deceased had not sustained any fracture but contusions on his body. The cause of death is stated to be head injury with associated multiple injuries over the body. It appears that the deceased had sustained subgalialhaematona at right temporal region of size 6 cm x 6 cm x 01 cm redish in colour, subgalialhaematona at right occipital region of size 9 cm x 6 cm x 01 cm redish in colour, subgalialhaematona at left temporal region of size 4 cm x 3 cm x 01 cm redish in colour.

5 Learned counsel for the applicants contended that taking the prosecution case as it stands, it is doubtful whether the offence would fall under Section 302 of the IPC.

6 Be that as it may, whether the offence is one under Section 302 or a lesser offence, will be decided by the trial Court. The applicants are in custody since 30th April 2018. Investigation is complete and charge-sheet is filed. The applicants have no antecedents.

7 Considering the aforesaid, the application is allowed on the following terms and conditions :

ORDER

(i) The applicants be enlarged on bail, on executing PR Bond in the sum of Rs. 20,000/- each, with one or two sureties in the like amount;

(ii) The applicants shall attend the concerned Police Station on the first Saturday of every month from 10:00 a.m. to 11:00 a.m. till the conclusion of the trial;

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

(iv) The applicants shall not leave Mumbai City, without the permission of the trial Court;

(v) The applicants shall inform their latest place of residence and mobile contact numbers 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;

(vi) The applicants to cooperate with the conduct of the trial and to attend the trial Court on every date of hearing, unless exempted;

(vii) The applicants shall file an undertaking with regard to clauses (ii) to (vi) in the trial Court, within two weeks of their release;

(viii) If there are two consecutive defaults either in attending the Police Station or in appearing before the trial Court, or breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicants' bail.

8 The application is accordingly disposed of.

9 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.

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

REVATI MOHITE DERE, J.