

Anand

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

BAIL APPLICATION NO. 2476 OF 2018

Nabi Ahmed alias Gulamnabi Abudullah Shaikh .Applicant

Vs.

The State of Maharashtra .Respondent

Ms Nidhi Sharma i/b. Ms Harsha Vaid, Advocate, for the Applicant
Mr. S. V. Gavand, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 11.07.2019

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-07 of 2017 registered with the Rabale Police Station, Navi Mumbai, for the alleged offence punishable under Section 302 of the Indian Penal Code.

3. Learned counsel for the Applicant submits that taking the prosecution case as it stands, no offence as alleged under Section 302 is disclosed qua the Applicant. She submitted that the offence, if any, would be a lesser offence i. e. under Section 304(II). She further submits

that there is no material in the charge-sheet, pointing to the complicity of the Applicant.

4. Learned APP opposes the Application.

5. Perused the papers. The Complainant – Ishac Shaikh is the brother of deceased – Ishteyak. He has stated in his complaint dated 05.01.2017, that Shahauddin and Alllauddin had brought the Applicant to him and requested if he (Applicant) could be kept in the masjid, for one night. According to the Complainant, his brother Ishteyak (deceased) was sleeping, at that time. He has further stated that at around 1.00 p. m. on 05.01.2017, he heard the Applicant shouting and hitting his head on the floor, pursuant to which he got scared, and locked the door of the masjid from outside and went to call Shahauddin. He has further stated that on his return with Shahauddin and Alllauddin he saw the Applicant running towards the Airoli Railway Station, Navi Mumbai, pursuant to which, he chased him, however, he could not be found. He has stated that when he returned home, he saw his brother – Ishteyak lying in a pool of blood. From the material on record, it appears that the Applicant was alone in the house when the alleged incident took place. The statements of Shahauddin and Alllauddin show

that they saw the Applicant running from the spot soon after the incident. Whether or not the offence would be one punishable under Section 302 of the IPC or a lesser offence, is a matter which will be decided by the trial Court.

6. Prima facie, considering the material against the Applicant, this is not a fit case to enlarge the Applicant on bail. Hence, the Application stands rejected. However, since the Applicant is in custody for more than three and half years, the trial of the Applicant is expedited.

7. Accordingly, the Application stands disposed of.

8. 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.

(REVATI MOHITE DERE, J.)