

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

CRIMINAL BAIL APPLICATION NO. 2749 OF 2018

Mohammad Aabid Ali Mohammad

Javed Shaikh

... Applicant

Vs.

The State of Maharashtra

... Respondent

...

Mr. Rajiv Patil, Sr. Advocate I/by Mr. Hasan Patel for the applicant.

Mrs. A.A. Takalkar, APP for the Respondent-State.

...

CORAM : PRAKASH D. NAIK, J.

DATE : 7th FEBRUARY, 2019.

P.C.

1. This is an application under Section 439 of the Cr.P.C. for bail in CR No.I-299 of 2017 dated 8.9.2017 registered with Bhiwandi City Police Station, District- Thane under sections 302, 325, 323 read with 34 of the Indian Penal Code.

2. Heard the learned Counsel for the applicant and the learned APP for the State.

3. The present crime has been registered on 8.9.2017 initially under Sections 325, 323, 504 read with 34 of the Indian Penal Code. The deceased succumbed to injuries on 22.9.2017 and

therefore section 302 of the Indian Penal Code has been added to the present crime.

4. The prosecution case in brief is that, Manojkumar Rathod (deceased) had parked his two wheeler. The deceased was under the influence of liquor. Two unknown persons questioned him for parking his vehicle. While he was proceeding to police station, the aforesaid persons abused him. Complainant was assaulted. He was admitted to hospital. The deceased Manojkumar himself had given his statement on 7.9.2017 and the first information report is lodged on 8.9.2017. On 7.9.2017 when deceased started feeling severe pain in his head, under the advise of Doctor he was hospitalized and in the said hospital deceased Manojkumar succumbed to injuries on 22.9.2017. During the course of investigation, the applicant came to be arrested on 3.10.2017 and after completion of investigation the police have submitted chargesheet.

5. The record indicates that, deceased Manojkumar while lodging the first information report has not named the applicant and gave description of the accused persons who assaulted him. One eye-witness to the crime namely Ramesh Sapkal has stated that on 4.9.2017 at about 11.00 p.m he saw two persons

assaulting one person and after the victim fell on the ground, accused persons fled away from the scene of offence. Thereafter the victim got up and demanded a bidi from the said witness. The said witness refused to oblige the victim and therefore the victim (deceased) went away from the said place by walk. The said witness has not identified the applicant as the accused who assaulted deceased on 4.9.2017 at 11.00 pm. It is to be noted here that, the alleged incident of assault took place on 4.9.2017 between 10.00 p.m. to 11.00 p.m and victim Manojkumar himself lodged the present crime on 7.9.2017 with the police. That the victim succumbed to injuries on 22.9.2017.

6. The medical report suggests that deceased had a fracture to his right side of ribs and due to internal bleeding, he died. From the aforestated facts, it is apparent that the accused did not have intention to kill Manojkumar and assaulted him in the fit of rage over the quarrel which took place between them pertaining to parking of vehicle. No weapon was used to assault the deceased. Co-accused has been granted bail.

7. In view thereof, the applicant can be released on bail.

Hence, the following Order :-

i) Applicant be released on bail in CR No. I-299 of 2017

registered with Bhiwandi City Police Station, District- Thane on his furnishing PR bond of Rs.25,000/- with one or two solvent local sureties in the like amount.

ii) After his release from jail, the applicant shall attend the Bhiwandi City Police Station, District- Thane on every first Monday of the month between 11.00 a.m to 1.00 p.m.

iii) Applicant shall also attend all the dates before the Trial Court unless precluded for medical reasons.

iv) Any two consecutive defaults in complying with the aforestated conditions will attract the provisions of cancellation of bail.

8. Application is allowed in the aforesaid terms.

(PRAKASH D. NAIK, J.)