

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

**CRIMINAL BAIL APPLICATION NO.1947 OF 2018
IN
CRIMINAL APPEAL NO.1328 OF 2018**

Makdumraja @ Danish Anjum Makrani	.. Applicant
Vs.	
State of Maharashtra	.. Respondent

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Dr.Yug M. Choudhary i/b. Mrs.Aisha M.Z. Ansari, for the Applicant.
Mr.Arfan Sait, APP for Respondent – State.
Mr.Aarif Ali M. Ali, Advocate for Intervener.
Mr.Madhukar S. Sahane, Bhadrakali Police Station, Nashik, present.

**CORAM : B. P. DHARMADHIKARI AND
PRAKASH D. NAIK, JJ.**

DATE : MARCH 18, 2019.

P.C.:

Heard Advocate Choudhary for the Applicant, Learned APP
for respondent and Mr.Aarif for intervener.

2 Accused no.3 Danish is before this Court seeking reliefs of bail during the pendency of Appeal. Additional Sessions Judge and District Judge-5, Nashik, has convicted him in Sessions Court case No.134 of 2013 along with his uncles who are accused nos.1, 2 and 4 for the offences punishable under Section 302 read with Section 34 of Indian Penal Code

("IPC", for short) and also under Sections 504 and 506 of IPC.

3 Advocate Choudhary submits that at the relevant time accused no.3 had just crossed age of 18 years and though there is allegation that he used stick to assault the deceased, there are no stick injuries and there was no blood on stick. He points out that according to prosecution other accused persons had used chopper and medical officer point out that body of deceased was having blood everywhere. Though, stick has been recovered on spot, it was not sent for report to Chemical Analiser.

4 Other submissions for incident which has taken place on 21st December, 2012, accused was taken in custody on 22nd December, 2012, and his clothes were seized on 23rd December, 2012. Finding blood on the clothes is, therefore, not decisive. He points out that according to prosecution, accused no. 3 had also some injuries at the time of his arrest.

5 Lastly, it is pointed out that he was on bail during pendency of the trial.

6 Learned APP and learned counsel assisting him both submits that on clothes of accused no.3, human blood has been found and there

are four eye witnesses who point out his role in the matter. Eye witnesses have been believed by trial Court and as such at this juncture, there is nothing to discard their evidence. It is submitted that during trial, accused no.3 made an attempt to pose himself as juvenile and for that purpose produced some forged documents. Not only this, after this Court granted him bail considering the tender age and shown sympathy, he has indulged in two offences. He, therefore, submits that present application is to be rejected.

7 Mr.Choudhary, learned counsel for the applicant upon instructions, points out that alleged offences are under Sections 420, 406, 504, 506 and 34 of IPC and under Section 352, 323 of IPC. He submits that accused no.3 must have been released on bail for these offences and he is in custody after the impugned judgment dated 4th September, 2018. He further add that accused no.3 has also completed MBA in the meanwhile.

8 The facts in brief show that there was some dispute between two families on parking of auto rickshaw in front of ration shop of one of the uncle of accused no.3. On same day earlier, an objection was raised by that uncle when brother of deceased had parked his auto-rickshaw there. That auto-rickshaw was removed, and, thereafter deceased came and he parked his auto-rickshaw at same place. He then went to have tea and

while coming back, he was attacked allegedly by appellants before this Court. At that time one Iqbal was accompanying deceased. Though police have recorded Section 161 statement of Iqbal, he has not been examined as witness.

9 The story of prosecution is accused Danish used stick to beat deceased while others accused persons were given blows of chopper. The alleged stick was found by police on spot, still stick has not been forwarded to Chemical Analiser and it is not the case of prosecution that it was having any blood. Learned APP has relied upon finding of blood on clothes of accused no.3. The clothes appear to have been seized more than 24 hours after alleged attack. It is the case of prosecution itself that even accused no.3 had some injuries, he was also sent for medical examination.

9 All eye witnesses who have deposed are from family of deceased.

10 It is to be noted that deceased was initially treated at Civil Hospital and then his family shifted him to a private hospital. He has expired four days after attack and reason for death is septicemia and in fact accused no.3, before this Court attempted to demonstrate that said

septicemia was not caused by injuries, but, it may be on account of some error/negligence in treatment.

11 Taking overall view of the matter, as accused no.3 was on bail during the trial, we are inclined to release him on bail on same terms and conditions imposed while granting bail during trial subject to furnishing fresh bonds and undertakings.

12 He shall also undertake not to indulge in any untoward/wrong conduct and shall report Registry/Superintendent of the trial Court on first working Monday in every month, as a condition of his release. If he fails to remain present, it shall be treated as failure to observe bail condition and consequences shall ensue.

13 Accordingly, we allow the application and dispose it off.

(PRAKASH D. NAIK, J.)

(B.P. DHARMADHIKARI, J.)