

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

CRIMINAL BAIL APPLICATION NO. 3240 OF 2018

Kamal Umar Dhanse ... Applicant

Versus

State of Maharashtra ... Respondent

Mr. Ganesh Gole I/by Ritesh Ratnam for Applicant.

Mr. S. S. Hulke, APP for Respondent – State.

CORAM : NITIN W. SAMBRE, J.

DATE : JANUARY 14, 2019.

P.C. :

. In Crime No. 29 of 2018 for an offence punishable under Sections 302, 143, 147, 148, 149, 323 & 504 of Indian Penal Code and Sections 37(1) (3) & 135 of Maharashtra Police Act the Applicant is seeking regular bail.

2. The prosecution case as is appearing in the chargesheet is, the group of the Applicant and the Complainant are neighbourers and there exist a civil dispute being Civil Suit No. 50 of 2017 pending before the Civil Judge, Mahad which pertains to the right of way and illegal construction allegedly carried out.

3. Forming same to be the basis, the Applicant along with co-accused who are his family members allegedly assaulted the Complainant and his father resulting into the death of Mohiddin Hurjuk. After the Applicant is chargesheeted by the prosecution, the Applicant moved this Court seeking release on bail. The said Application came to be withdrawn. Citing the change in circumstances, viz – grant of bail to the other co-accused, the Applicant has approached this Court.

4. The contention of the Complainant is as that of the specific role attributed to the Applicant of assaulting deceased with a stone. There is no corroboration to the said statement. The learned Counsel for Applicant submits that if the supplementary statement of Complainant Samir Mohiddin Hurjuk and other eye witnesses is appreciated, there is no specific role attributed to the Applicant in commission of the crime in question, but for the first statement dated 2nd May 2018.

5. Apart from above, according to him, perusal of the Post Mortem Report assigns the cause of death as “*due to intracranial bleeding secondary to cardiopulmonary arrest secondary to assault*”. The learned Counsel for Applicant submits that since other than the complainant none

of the witnesses have allegedly stated that the Applicant has assaulted the deceased, the Applicant needs to be released on bail. He submits that there are no criminal antecedents and the Applicant is very much available for investigation. He would then urge that the existence of civil dispute can be considered to the interest of the Applicant to the extent of the false implication of the Applicant in the crime in question.

6. The learned APP would object the very mentality of the Applicant and also the merits of the matter. According to him, in Bail Application Nos. 2834 of 2018 and 2835 of 2018 the reason cited for allowing the Applications of other co-accused is the injury caused by the present Applicant. He would then urge that if the Applicant is released on bail, there are chances of recurring of similar type of incident.

7. Considered rival submissions.

8. All the eye-witnesses in categorical terms stated about the involvement of the Applicant along with other co-accused in the crime in question. The learned Counsel for Applicant was right in inviting attention of this Court to the statement of the eye-witnesses other than the

Complainant Samir so as to impress upon this Court to form an opinion that though the specific role of using the stone as weapon is alleged against the Applicant which appears to be the one of the cause of death, Complainant Samir was assaulted by the Applicant and other co-accused, his family members. From statement recorded on 2nd May 2018 regarding the incident dated 1st May 2018, same in categorical terms attributes specific role to the Applicant of use of stone in the commission of crime. The said role attributed to the Applicant further co-relates with that of medical evidence on the record i.e. the cause of death.

9. Apart from above, though the learned APP has invited attention of this Court to the reason of release of other co-accused by this Court, particularly in the above cited Bail Application Nos. 2834 of 2018 and 2835 of 2018, however, whether the Applicant was involved directly in the crime in question could be an issue which can be decided at an appropriate stage of the proceedings, particularly after appreciating the oral evidence. Since the documentary evidence on record pin-points the involvement of the Applicant in the crime in question with specific motive and role, in my opinion, no case for grant of bail is made out.

10. As such, the Criminal Bail Application fails. Hence the same stands rejected.

(NITIN W. SAMBRE, J.)