

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.3242 OF 2018

Krishna Lingayya Komlaboyanna, Age 18 years,
Occ.Business, R/o.Indira Nagar Zopadpatti,
Behind Zulelal Mandir, Sindhi Camp Chambur,
Mumbai.

Applicant

versus

The State of Maharashtra

Respondent

Mr.Prem Keshwani with Mr.Randive and Mr.Kunal Phule for
applicant.

Mr.A.R.Kapadnis, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 29th January 2019

PC :

1. This is an application for bail in connection with CR No.157 of 2018 registered with Chembur Police Station for offences under Sections 302, 323, 504, 212 r/w 34 of Indian Penal Code. The applicant was arrested on 8th May 2018.

2. The case of prosecution is that on 7th May 2018 the complainant and his friends made a plan to go to Mumbai City for a joy ride. They engaged a taxi and came to Chembur Colony at about 2.30 am. All of them got down from the taxi and were talking to each other. At that time four persons came near taxi. One of them asked the driver about availability of taxi. The taxi driver told the said persons that he has to receive the hire charges from passengers. At that time the accused told the complainant to pay taxi fare immediately as they wanted to go by taxi. Since it took some time to

pay the taxi fares, the said four persons told the complainant and others to hurry up as they wanted to go immediately. There was exchange of words. The accused started assaulting the complainant and his friends by kicks and fist blows. One of them lifted stone lying at the place of incident and assaulted at the head of Surendra Singh by stone. The other person took paver block and assaulted the injured. Surendra Singh was taken to hospital where he was declared dead. The FIR was lodged as stated above for the aforesaid offences.

3. The prosecution is relying upon statements of three eye witnesses to the incident. On perusal of the FIR it is apparent that according to the complainant the accused are from the same area and they were known to each other by faces. On inquiry he came to know about their names and has attributed overt act. In the FIR it has been mentioned that the applicant is the person who had allegedly assaulted Surendra Singh by assaulting him by stone. The history given by the person who took the injured person to hospital, refers to assault by unknown persons. The taxi driver has referred to assailants as unknown persons, however, there is no identification parade. Learned APP, however, relied upon statement of one Shijo Imanwel who is referred to CCTV footage showing presence of applicant in the area of crime. The medical certificate indicates that opinion as to cause of death was head injury.

4. Apparently the incident had occurred on the spur of moment. There was exchange of words between the accused and complainant and his friends. The act was not pre-meditated. The fight was sudden. Stone and paver block were lying at the place of incident.

The applicant is aged about 19 years. Three other persons were juvenile at the time of incident and they have been released on bail. However, the applicant continues to be in custody. Investigation is completed and charge sheet is filed. It is debatable whether Section 302 will be attracted in this case considering the manner in which the crime has occurred. However, the same will be decided at the time of trial and at this stage it would not be appropriate to make any observations in this regard. Considering the factual matrix of the case and manner in which the incident had occurred, the age of applicant, the fact that others were juvenile and granted bail and also considering the fact that applicant is in custody from the date of arrest and investigation is completed, bail can be granted to the applicant.

5. Hence, I pass following order :

ORDER

- (i) Criminal Bail Application No.3242 of 2018 is allowed and disposed off;
- (ii) The applicant be released on bail in connection with CR No.157 of 2018 registered with Chembur Police Station, on furnishing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- (iii) The applicant shall report Chembur Police Station once in a month on every first Saturday between 11 am and 1 pm till further orders;
- (iv) The applicant shall not tamper with the evidence and shall attend Trial Court proceedings regularly, unless exempted by the Trial Court for some reason;

(v) The applicant is permitted to furnish cash security in the sum of Rs.25,000/- for a period of four weeks.

(PRAKASH D. NAIK, J.)

MST