

nsc.

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

CRIMINAL BAIL APPLICATION NO.3383 OF 2018

Sachin Pandurang Shevankar @Bhat	...Applicant
Versus	
State of Maharashtra	...Respondent

Mr.R.V.Gupta, for the Applicant.

Mr.P.H.Gaikwad-Patil, A.P.P for the Respondent - State.

PSI – Dhananjay Memane, Ghatkopar Police Station, Mumbai.

CORAM : REVATI MOHITE DERE, J.

DATE : 4th JULY, 2019

P.C. :

1. Heard learned counsel for the parties.
2. By this application, the Applicant seeks his enlargement on bail in connection with C.R.No.261 of 2017 registered with the Ghatkopar Police Station, Mumbai, for the alleged offences punishable under Sections 302 r/w 34 of the Indian Penal Code.

3. Perused the papers. According to the complainant – Imran Shaikh (brother of Irfan Shaikh - deceased) on 30th April, 2017 at about 10.30 p.m., there was a quarrel between Irfan and the applicant, which was resolved by him. The incident took place on 1st May, 2017, at about 1.00 a.m. It is alleged that the applicant started quarreling with Irfan (deceased) and assaulted him with a beer bottle on his neck, as a result of which, he sustained a grievous injury. Irfan was immediately rushed to the hospital. During the course of treatment, Irfan was declared dead. The said incident of assault by the applicant on Irfan has been witnessed by the complainant – Imran and Imran's friends. There are about 5 eye-witnesses to the said incident of assault.

4. Learned Counsel for the applicant submitted that Karan's statement has not been recorded though he had taken Irfan to the hospital soon after the incident along with Imran. He further submitted that although the complainant has alleged that he had witnessed the applicant assaulting Irfan with a beer bottle, in the history given to the doctor, he has stated that Irfan was assaulted with a koyta. He further submitted that taking the prosecution case as it stands, even otherwise, the offence would not be

one under Section 302 of the Indian Penal Code, as it is a case of single blow. A perusal of the postmortem report shows that Irfan sustained a penetrative injury on carotid side of neck and that carotid artery was cut. The cause of death is 'Death due to haemorrhagic shock due to cut puncture injury at neck. However viscera and samples preserved for CA.'

5. *Prime facie*, the applicant had motive to assault Irfan (deceased). There are eye-witnesses to the incident of assault. The possibility of the applicant threatening or tampering with the witnesses cannot be ruled out. Whether or not the offence is one under Section 302 or a lesser offence, is a matter which will be decided by the trial Court. Apart from the aforesaid, the C.A. Report shows that blood found on the sports pant worn by the applicant, was that of deceased – Irfan.

6. Considering the material on record, this is not a fit case to enlarge the applicant on bail.

7. Accordingly, the application for bail is rejected and disposed of as such.

. It is made clear that the observations made herein are prima facie for deciding the aforesaid application, and the learned Judge shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

REVATI MOHITE DERE, J.