

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

CRIMINAL BAIL APPLICATION NO. 460 OF 2020

Kalim Md. Islam Choudhary ...Applicant

Versus

The State of Maharashtra ...Respondent

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Ashutosh Thipsay i/b Mr. Gaurav Chaubey, Advocate for the Applicant.

Mr. S. R. Agarkar, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 11th MARCH, 2020

PC :

1. The applicant is seeking bail in C.R. No. 247 of 2019 registered with D.N. Nagar, Police Station, Mumbai for offences punishable under Sections, 307 of Indian Penal Code. The applicant was arrested on 7th June, 2019. The FIR was lodged on 31st May, 2019.
2. It is alleged that on account of previous quarrel between the applicant and injured, the injured was assaulted by giving two blows by the applicant with iron pipe on his head. He was taken to the hospital. The investigation is completed and charge-sheet is filed.
3. Learned Advocate for the applicant submitted that the applicant is in custody from 7th June, 2019. There are no criminal antecedents against the applicant. There was no intention to commit

murder, hence, Section 307 would not be attracted in this case. It is submitted that Certificate issued by the Cooper Municipal General Hospital, Juhu, Mumbai refers to two injuries in the nature of right ear bleed which was grievous in nature and swelling on tempo parietal region which is simple in nature. The applicant is willing to abide any condition.

4. Learned APP submitted that intention to commit murder is apparent from the FIR itself. The medical evidence supports the prosecution case. He relied upon Certificate issued by Nanavati Super Specialty Hospital, Mumbai which indicates that the victim was operated on an emergency basis/evacuation of extradural hematoma. He submitted that the victim was in coma for two days and he was discharged from hospital after 10 days. The nature of medical treatment given to the victim shows the gravity of the injury.

5. I have perused the charge-sheet. The statement of the victim was recorded on 19th June, 2019. He has stated that two blows were given by iron pipe by the applicant. The injury Certificate issued by the Cooper Municipal General Hospital, Juhu, Mumbai refers to two injuries, one is grievous. While rejecting the application for bail by the Sessions Court, however, the Learned Sessions Judge while dealing with the contention that the offence under Section 307 of

Indian Penal Code is not made out had observed that there was dispute between the victim and accused since last one year due to some money transaction. On the day of incident, firstly accused gave blow by iron pipe on the head of the injured and before making inquiry by victim, another blow was given. Applicant and victim both are resident of same locality and acquainted with each other. The victim had met with an accident in the year 2007 and he was in coma. Despite that the twicely applicant/accused had given blows by iron pipe on the head of victim. Thus, the intention or knowledge of the accused was to commit murder. It is difficult to accept that the applicant had knowledge about medical history. The incident had occurred on account of money transaction and it is alleged that two blows were given by the applicant. The Certificate issued by the Cooper Municipal General Hospital, Juhu, Mumbai refers to these injuries as stated herein above, Thus, this is not the stage to give finding about sustainability of offence u/s 307 of IPC. However, considering the factual matrix of the case and considering the fact that the applicant is in custody from 7th June, 2019, there are no criminal antecedents against applicant, on stringent condition, bail can be granted to the applicant.

6. Hence, I pass the following order :

ORDER

- i) Bail Application No. 460 of 2020 is allowed;
- ii) The applicant is directed to be released on bail in connection with C.R. No. 247 of 2019 registered with D.N. Nagar, Police Station, Mumbai on furnishing P.R. bond in the sum of Rs. 25,000/- with one or more sureties in the like amount;
- iii) The applicant shall report concerned police station once in a month on every first Saturday between 11.00 am. to 1.00 pm. till conclusion of trial.
- iv) Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)