

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1951 OF 2019

Manish Sumit Roy

....Applicant

v/s.

The State of Maharashtra

....Respondent

Mr. Ashwin Rasal a/w. Mr. Ashok Chopra, Advocate
for the applicant.

Mrs. J.S. Lohakare, APP for the State.

IO, Amruta Mane, SID, Mumbai present.

CORAM : SANDEEP K. SHINDE, J.

Monday, 3rd February, 2020.

P.C. :

1. Heard.

2. The applicant is seeking his enlargement on bail in Crime No. 110/2018 corresponding Sessions Case No. 635/2018 for the offence punishable under Section 302 of the Indian Penal Code.

3. It is alleged, the applicant who was pavement dweller smashed the head of the deceased

by a stone. Opinion as to probable cause of death is head injury (unnatural) inter-alia, reporting nine wounds were found on the head of the deceased. The alleged incident had occurred on 4th June, 2018 in the wee hours at 3.15 a.m. The deceased was allegedly sleeping on the pavement with his friends, Krishna and Sachin eventually the eye witnesses. Complainant is brother of the deceased who had reported the incident on 4th June, 2018, whereupon the subject crime came to be registered against the unknown persons. The final report reveals, that on 4th June, 2018 statements of Krishna and Sachin were recorded, who had seen the alleged incident, however, both these witnesses at the first instance, did not disclose the name of the applicant. Admittedly, the applicant was arrested on 4th June, 2018 at 12.35 hrs and it is only on 5th June, 2018 the supplementary statements of Krishna and Sachin were recorded who then disclosed the name of the applicant. Obviously, it was only after the arrest of the applicant on the previous day. Admittedly, the eye witnesses, at the first instance, did not notice the presence of the applicant. In the given

situation, the prosecution ought to have conducted the test identification parade which has not been held. Though reliance was sought to be placed on the statement of Bhakti Shivgan, in my view, at the most, her statement may suggest motive alleged by the prosecution. Additionally, though prosecution has retrieved the footage of CCTV installed in the vicinity where the incident had taken place, but surprisingly, except the Certificate under Section 65B of the Information Technology Act, no other evidence in the form of panchanama (hash-value) or otherwise has been produced and placed on record. The applicant is in custody since June, 2018. The investigation is over. Though the charge is framed as contended by the learned APP, in my view, case is made out for releasing the applicant on bail.

4. The applicant arrested in C.R. No.110/2018 registered with Bhoiwada Police Station, is directed to be released on bail on furnishing P.R. Bond of Rs. 25,000/- (Rs. Twenty Five Thousand only) with one or two sureties in the like sum.

5. The applicant shall attend the concerned Police Station as and when called.

6. The applicant shall furnish the particulars of his place of residence and contact details to the Investigating Officer of the Police Station concerned within seven days from his release.

7. The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case.

8. It is made clear that observations made hereinabove shall be construed as expression of opinion only for the purpose of granting bail and the same shall not in any way influence the trial in other proceedings.

(SANDEEP K. SHINDE, J.)