

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

CRIMINAL BAIL APPLICATION NO. 220 OF 2020

Suryabhan Santu Lodh

.... Applicant

Versus

The State of Maharashtra

.... Respondent

Geeta Singh & Associates for Applicant.

Mr. S. H. Yadav, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 07th JANUARY, 2021

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No. 572 of 2018 registered at Sakinaka police station, on 29/08/2018, under section 302 of the Indian Penal Code (for short 'IPC'). The applicant is arrested on 29/08/2018 and since then he is in custody. The investigation is over and the charge-sheet is already filed.

2. Heard Shri. Ramesh Pandey, learned counsel for the applicant and Shri. Yadav, learned APP for the State.

3. The prosecution case is in respect of commission of murder of one Brijbhan who was real brother of the present applicant. The First Information Report (for short 'F.I.R.') is lodged by Brijbhan's widow Sushila Lodh who had seen the incident. She has narrated the history behind the relations between the applicant and deceased and their families. She has stated that, she was residing in a joint family's house with deceased Brijbhan, their daughter, present applicant, his wife and children, as well as, applicant's parents. The applicant was a rickshaw driver and he was supporting the family. The deceased was addicted to liquor and drugs. He was not working. He was constantly harassing all the family members demanding money and used to quarrel with the applicant on that count. The deceased was under treatment for his addiction, but he was not taking medicines properly.

4. On 28/08/2018 in the morning, Brijbhan picked up quarrel with a person in the locality. The applicant intervened. In the night, Brijbhan was found under the influence of some drug or liquor. The applicant himself brought him home and kept on the

mezzanine floor. The room was locked from the outside. On the next day i.e. on 29/08/2018, in the morning, the deceased started creating noise and started abusing everyone in the family. The applicant asked all the family members to go to his sister's house. Her house was in the neighbourhood. The applicant opened the room. The deceased got angry and he started abusing everyone in the family. He started assaulting the applicant and his parents. The others from the locality were trying to pacify him but he was not in mood to listen to them. The fight continued. During the fight the applicant and deceased started running on the street. Both were abusing each other. It is alleged that the applicant picked up a cement block and threw it at the deceased. It hit him on the head. Thereafter the applicant picked up another cement block and gave 4 to 5 blows on the head of Brijbhan, who got severely injured. The persons in the locality removed him to the hospital but he succumbed to injuries. Thereafter F.I.R. was lodged and the matter was investigated.

5. The learned counsel for the applicant submitted that,

though it is an unfortunate incident, the offence would not fall within the definition of 'Murder'. He submitted that, version in the F.I.R. itself shows that there was no premeditation and generally the deceased was causing big nuisance to the family members. There was constant harassment at his hands. The assault was on the applicant's parents and, therefore, the applicant should be shown leniency for consideration of granting him bail.

6. The learned APP, on the other hand, submitted that the offence is serious. The applicant had given 4 to 5 blows on the head and, therefore, intention can be inferred from his conduct. Hence, the applicant is not entitled to be released on bail.

REASONS:

7. With the assistance of learned counsel for the applicant, as well as, learned APP, I have perused the charge-sheet annexed to this application. Besides the first informant, there are many other eye witnesses namely Avantesh Kawle, Bhindi Farukhiya, applicant's father Santu Lodh, Suraj Chauhan, Sharif

Shaikh, Shahrukh Shaikh, Kadar Sayyad, Ali Razak and Amir Shaikh. All of them have consistently narrated the incident as narrated by the first informant. The mother of the deceased and the applicant has stated that the deceased had assaulted her with a brick because of which, she had become unconscious. To that extent she has supported the fact that the deceased had created serious problems in the household.

8. The Postmortem notes show that the deceased had suffered 7 injuries. Five injuries were in the nature of contusion and abrasion. But there were two injuries on the head. Out of them, one injury appears to be grievous with the dimension 10cm x 8cm and it was perhaps the cause of death. The other injury was laceration on left side having dimension 3cm x 1cm which was found to be bone deep. The cause of death given was head injury.

9. The narration in the F.I.R. and statements of the eye witnesses mention that the applicant had given 4 to 5 blows on the head, however, it is not supported by the medical evidence. The

medical evidence shows that there was one severe blow given on the head of the deceased. There was not premeditation. The incident has occurred in the early morning because of the unruly behaviour of the deceased who had actually assaulted his mother. That could be termed as grave and sudden provocation. The applicant was not carrying any weapon. There was no premeditation and it is difficult to observe that he had any intention to cause murder of the deceased. The background in which the fight had taken place cannot be ignored. The applicant's mother was assaulted by the deceased on the head. The deceased was addicted to liquor and drugs and was violent in nature, which is reflected in the statements of the eye witnesses. Considering all these factors, it appears that the offence may not be that of murder but it could be a lesser offence. The applicant is in custody since 29/08/2018. The investigation is already over. Therefore, I am inclined to grant bail to the applicant.

10. Hence, the following order :

ORDER

- (i) In connection with C.R.No. 572 of 2018 registered at Sakinaka police station, the applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.
- (ii) Looking at the prevailing circumstances, it may not be possible for the applicant to furnish sureties immediately. Therefore, initially the applicant is permitted to furnish cash bail for the same amount. The applicant will have to furnish the sureties, as directed, within two months from today.
- (iii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)