

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL BAIL APPLICATION NO. 669 OF 2021**

Ramakant Sureshchandra Kewat

... Applicant

V/s.

The State of Maharashtra

... Respondent

Mr. Rajendra Rathod for Applicant.

Mr. A.R. Patil, A.P.P. for Respondent-State.

CORAM : A.S. GADKARI, J.**DATE : 26th April 2021.****(Through Video Conferencing)****PC. :**

1. This is a successive Application for bail.

The earlier Application for bail bearing No.1031 of 2019 preferred by the Applicant was dismissed as withdrawn, by this Court, by its Order dated 25th April 2019, with liberty to file a fresh Application for bail before the Trial Court, if the trial arising out of C.R. No.129 of 2018 registered with Dadar Police Station, Mumbai, now culminated into Sessions Case No. 622 of 2018, pending on the file of Additional Sessions Judge, Greater Mumbai does not commence within a period of one year from the date of passing of the said Order.

2. Mr. Rathod, learned counsel for the Applicant submitted that, as

per his instructions, till date, the Trial Court has not framed charge against the Applicant. He submitted that, the Applicant is in jail for more than 33 months which itself is a change in circumstance for considering the present Application. He submitted that, the case of the Applicant would fall under Section 304 (Part II) of the Indian Penal Code and not under Section 302 of the I.P.C. as alleged by the prosecution. He submitted that, in the present case, the Applicant has given a single blow with a dumbbell on the head of deceased Vinay Gupta, during the scuffle which ensued after a tiff. He submitted that, if the Applicant is convicted under Section 304 Part II of I.P.C., in that event, maximum sentence which can be imposed is for 10 years and not more than it. He submitted that, the Applicant, till date has undergone approximately one third of the sentence and therefore, he may be released on bail. He submitted that, there are no antecedents at the discredit of the Applicant.

3. Perusal of charge-sheet indicates that, the First Information Report is lodged by Mr. Chandan Thakur and eye witness to the present Crime. It is the prosecution case that, on 21st June 2018, at about 6.10 a.m., the Applicant had been to the gymnasium situated in his locality. A person by name Mr. Kishor informed Mr. Chandan Thakur that, the Applicant appeared to be in inebriated condition and Mr. Kishor left the premise. At about 7.00 a.m. deceased Vinay Gupta came to the gymnasium for doing exercise. At that

time, the Applicant went to first informant Chandan Thakur and asked him, as to why Vinay Gupta is looking at him (Applicant) with anger and told informant that, he would look at Vinay Gupta today itself. After sometime, the Applicant started abusing deceased Vinay Gupta in filthy language. When the deceased inquired with Applicant, as to why he was abusing him unnecessarily, at that time, the Applicant told him that, he would beat him. A scuffle took place between them. The said scuffle was rescued by the informant and one other boy who was present in the gymnasium. The Applicant continued to hurl filthy abuses to deceased Vinay Gupta. When the deceased Vinay Gupta questioned the Applicant about his hurling of abuses, it is alleged that, all of a sudden the Applicant took a dumbbell weighing 25 LBS from the rack and assaulted Vinay Gupta on its head on the left side. Vinay Gupta fell on the ground. He was immediately admitted to hospital. Mr. Vinay Gupta succumbed to injury at about 11.00 a.m. on 24th June 2018.

4. The postmortem note indicates that, the deceased had suffered one injury over left frontal region of 3 cm x 0.2 cm in size with subdural contusion of diameter 6cm and 5cm. Doctor's have opined that, the said injury was antemortem injury. That, subdural hematoma was present over the left cerebral convexity at the time of conducting autopsy.

5. Prima facie it appears that, the Applicant did not have intention to commit culpable homicide of Vinay Gupta and it is in the said scuffle the

applicant gave a single blow with a dumbell on the head of deceased. It further prima facie appears that, the act of assault was committed without premeditation. The Applicant is in jail for about 33 months as of today. The prosecution has not framed charge against the Applicant till today, despite granting an opportunity by this Court by its Order dated 25th April 2019.

6. In view thereof, the Applicant can be released on bail.

Hence, the following Order :-

- (i) Applicant be released on bail in C.R. No.129 of 2018 on his furnishing PR. bond of Rs.25,000/-, with one or two local sureties in the like amount.
- (ii) After his release from Jail, the Applicant shall attend Dadar Police Station, on every first Monday of the month between 10.00 a.m. and 12.00 noon, initially for a period of one year

After the end of one year, the Applicant shall attend the Dadar Police Station, on every first Monday of the every 3rd Month between 10.00 a.m. and 12.00 noon. The Applicant thus, shall attend Dadar Police Station, 4 times in a year, during the pendency of trial.
- (iii) If the Applicant commits two consecutive defaults in complying with condition No.(ii) above, in that event, the prosecution will be at liberty to file an Application for cancellation of bail.
- (iv) Applicant shall not tamper with the evidence and/or pressurize the prosecution witnesses.

7. Application is allowed in the aforesaid terms.
8. All the concerned to act on the basis of the authenticated copy of this Order.

[A.S. GADKARI, J.]