

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

CRIMINAL BAIL APPLICATION NO. 688 OF 2021

Mohammed Najim Karimuddin Ansari Applicant
Versus
The State of Maharashtra Respondent

Mr. Satish Ingale, for the applicant.
Ms. Pallavi N. Dabholkar, APP for the State/Respondent.

CORAM: SARANG V. KOTWAL, J.
DATE : 30th APRIL, 2021
(Through Video Conferencing)

P.C. :

1. The applicant is seeking his release on bail in connection with C.R No. 415 of 2020 registered at Mahatma Phule Chowky Police Station, Thane, on 24/08/2020 under sections 302, 323, 504 and 506 of the Indian Penal Code. The applicant was arrested on 24/08/2020 and since then he is in custody. The investigation is over and the charge-sheet is filed.

2. Heard Mr. Satish Ingale, learned counsel for the applicant and Ms. Pallavi N. Dabholkar, learned APP for the State.

3. The FIR is lodged by one Amarbahadur Vipit Kanojia. He has described his business rivalry with one Salauddin Ansari. Both of them were selling bakery products. On 24/08/2020, Salauddin's brother in law Najim Ansari (the present applicant) came to the informant Amarbahadur and started abusing him. The applicant also started beating him with fist and kick blows. At that time the other accused Kasimuddin Ansari and Salauddin came there. They started assaulting the first informant. At that time the informant's elder brother Roshanlal came to intervene. All the three accused then assaulted Roshanlal with fist and kick blows on his chest, stomach and other parts. Roshanlal fell down. He looked serious. He was taken to hospital. While he was being taken to the hospital, even at that time accused again assaulted the informant. Roshanlal was declared dead in the hospital. Therefore this FIR is lodged.

4. Learned Counsel for the applicant submits that the post mortem notes show that Roshanlal died because of heart attack and not because of any act committed by the present applicant. He submitted that the offence of murder is not made out. There was no premeditation and knowledge which can be attributed to the present applicant.

5. Learned APP submitted that, it is only because of the assault on the deceased, he had died. Therefore the applicant can not escape his liability.

6. I have considered these submissions. With the assistance of both learned Counsel, I have perused the entire charge-sheet. Apart from the first informant there are statement of Roshanlal's wife Shanti, eye witnesses Farzana and Suresh etc. All of them have consistently narrated as to how Roshanlal was beaten by the accused with kicks and fist blows. There is a statement of one Ethesham Rajali Sayyed who was a rickshaw driver. He

has stated that when the rickshaw was being taken to the hospital the accused assaulted the first informant.

7. Therefore at this stage the incident cannot be doubted. However, most important factor in this case is post mortem notes. It clearly mentions that there was very minor superficial abrasion below left knee of the deceased. There were no other surface wounds. Medical papers show that the deceased was suffering from massive hepatosplenomegaly. The cause of death was given as "cardio respiratory arrest due to myocardial infarction". Thus it appears that health condition of the deceased was not good. Therefore, premeditation, intention or knowledge cannot be attributed to the present applicant. The main quarrel was with the informant and initially he was assaulted. It is only after some time that the deceased had tried to intervene when he was also assaulted. No weapon was used in the assault. Therefore at this stage there is considerable force in the submissions of learned Counsel for the

applicant that the case may not fall within the meaning of 'murder' as defined under section 300 of the Indian Penal Code. It would be a much lesser offence. The applicant is already in custody since 24/08/2020. The investigation is over and the charge-sheet is filed. Therefore no purpose will be served by keeping the applicant behind bars during the entire period of trial.

8. Hence the following order.

ORDER

- (i) In connection with C.R. No. 415 of 2020 registered with Mahatma Phule Chowk Police Station, Thane, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (RupeesThirty Thousand Only) with one or two sureties in the like amount.
- (ii) The application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)