

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.746 OF 2021

1. Ms.Heena Maru, Age 21 years,
Occ.Housewife, presently lodged at Byculla Jail.

2. Mahindra Ramesh Parmar, Age 24 years,
Occ.Service, presently lodged at Taloja Jail,
both are having permanent residence at
D'Souza Chawl, Satyanagar, Kurla Pipeline,
Kalpana Store, Sakinaka, Andheri (E),
Mumbai.

Applicants

versus

The State of Maharashtra

Respondent

Mr.Ashok M. Saraogi, Advocate for applicant.

Ms.Anamika Malhotra, APP, for Respondent-State.

PSI B.Chavan, Sakinaka Police Station, Andheri, Mumbai, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 3rd May 2021

PC :

1. The applicants are seeking bail in CR No.1122 of 2020 registered with Sakinaka Police Station for the offences under Sections 304, 351, 504, 506 r/w 34 of Indian Penal Code. The FIR was registered on 12th October 2020.

2. The case of prosecution is that the brother of complainant Nilesh and Mahendra Parmar (applicant no.2) used to tease each other. There was quarrel amongst them in the past. On 11th October 2020 the brother of complainant went out of house at about 2300 hours after having dinner. He returned home crying. He informed

the complainant and other family members that he is assaulted by Mahendra Parmar (applicant no.2). The complainant, her father, mother and sister approached Mahendra Parmar along with Nilesh. Mahendra Parmar and his friend Hina Maru were present at the place of incident. Hina Maru threatened them. She abused them. The younger brother of the informant told Hina Maru not to abuse them. Mahendra Parmar picked up a bamboo stick lying there and started assaulting brother of complainant Kanji. He was prevented from doing so by mother of the informant. At that time Hina Maru assaulted Kanji. Hence Nilesh tried to intervene. At that time Hina Maru forcefully pushed Kanji from behind as a result of which he fell on the foot path and it resulted in injury to his head and face. There was bleeding. He was unconscious. Both the applicants left the place of incident. Kanji was taken to hospital. He was declared dead. Hence FIR was registered. The applicants were arrested.

3. Learned advocate for the applicants submitted that applicants are in custody for substantial period of time. Investigation is completed and charge sheet is filed. The incident had occurred at the spur of moment. There was no intention to cause death of the victim. The complainant and other family members had approached the accused and confronted them. The case of the prosecution is that the victim was pushed behind as a result of which he fell down on the foot path causing injury to his head. The offence u/s 304 of IPC is not attracted. There are no criminal antecedents against the applicants.

4. Learned APP submitted that specific overt act has been attributed to both the applicants. The overt act attributed to the

applicants has resulted in death of the victim. The offence u/s.304 of IPC is of serious nature. The victim was pushed with such a force that he fell down on foot path and sustained injury. He was declared dead. The offence is punishable with imprisonment for life.

5. I have perused the FIR and other documents. It is apparent that brother of the complainant and applicant no.2 were acquainted with each other. They used to tease each other. There was incident of quarrel in the past. On the date of incident it was alleged that Nilesh was assaulted by applicant no.2. The complainant and her entire family had approached applicant no.2 and confronted him. Applicant no.1 is friend of applicant no.2. She was present. She had allegedly threatened and abused the complainant and others. Applicant no.2 tried to assault by wooden bamboo lying at the place of incident. The mother of informant intervened. Applicant no.1 has allegedly pushed with force the brother of informant from behind, which has resulted in his fell down on the foot path causing injury to his head and face. He was declared dead. Taking into consideration the facts of the case as it is, it is apparent that the incident had happened suddenly. There was quarrel and in the course of scuffle between both of the parties the applicant no.1 had allegedly pushed the deceased from behind. Prima facie it cannot be said that accused had intention to cause death of the victim or knowledge that the act would result in death of victim. The investigation is completed and charge sheet is filed. Further detention of the applicants is not necessary. Bail can be granted to the applicants.

6. Hence, I pass following order :

ORDER

- (i) Bail Application No.746 of 2021 is allowed;
- (ii) Applicants are directed to be released on bail in connection with C.R.No.1122 of 2020 registered with Sakinaka Police Station, Andheri, Mumbai, on executing P.R.Bond in the sum of Rs.25,000/- each, with one or more sureties in the like amount;
- (iii) The applicants shall report concerned police station once in three months on first Saturday of the month between 11.00 a.m to 01.00 p.m till further orders;
- (iv) Applicants are permitted to furnish provisional cash bail security in the sum of Rs.25,000/- each for a period of eight weeks, in lieu of surety;
- (v) Bail Application No.746 of 2021 stands disposed of accordingly.

(PRAKASH D. NAIK, J.)

MST