

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

CRIMINAL BAIL APPLICATION NO. 983 OF 2021

1. Adarsh Raju Dhumal
2. Nikhil Raju Dhumal ... Applicants

Versus

The State of Maharashtra ... Respondent

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Ms. Anjali Patil i/b. Ms. Mallika N. Sharma, Advocate for the Applicants.

Ms. Anamika Malhotra, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 26th APRIL, 2021

PER COURT:

1. The applicants were arrested on 10th September, 2020 in connection with C.R. No. 477 of 2020 registered with Bhandup Police Station, Mumbai for offences under Sections 302, 452 r/w Section 34 of Indian Penal Code (for short "IPC").

2. The First Information Report (for short "FIR") was lodged on 10th September, 2020 by Smt. Shanta Kusalkar alleging that, on 9th September, 2020, the neighbour of complainant Smt. Pooja Nikhil Dhumal had visited her house for demanding vegetable. The complainant told her that she does not have vegetable. Smt. Dhumal left the house of complainant. The son of complainant Krishna had gone out and he returned home at about 9.30 p.m. He

told the complainant that he had picked up the daughter of Aakash Dhumal aged about 4 years and kissed her. This was not liked by brother of Aakash Dhumal, Nikhil and he assaulted him with fist blows. While Krishna was narrating this incident to the complainant, Nikhil Dhumal, and his brother Aadarsh Dhumal visited house of complainant. Both of them assaulted Krishna with fist and kick blows on his chest, back and abdomen. The complainant questioned them and tried to intervene. She was pushed aside and the accused continued assaulting complainant's son. As a result of assault complainant fainted and fell down. Krishna did not give any response to complainant. Police were informed about incident and Krishna was taken to hospital for treatment. He was declared dead. Hence, FIR was registered. On completing investigation, chargesheet was filed.

3. The applicants preferred an application for bail before the Sessions Court. The said application was rejected by order dated 27th February, 2021.

4. Learned advocate for the applicants submitted that the applicants are in custody from 10th September, 2020. There was no intention to cause death of the victim. The offence under Section 302 of IPC is not made out. There are no criminal antecedents against the applicants. There was no motive for the applicants to kill the

deceased. No weapon was used in the crime. Post-mortem has not been annexed to the charge-sheet. This Court had granted bail to the accused in similar cases. Reliance is placed on certain orders passed by this Court granting bail in similar circumstances.

5. Learned APP submitted that the submission of learned counsel for the applicants cannot be accepted at this stage. There is eye witness to the incident. The victim was assaulted by the applicants. Although the complainant tried to intervene, the accused continued to assault the victim. The death of the victim as a result of the fist and kick blows attributed to the applicants. There was continuous assault by the applicants.

6. On perusal of the FIR it can be seen that the incident had occurred on 9th September, 2020. The applicants are brothers. The role attributed to them is that the victim was assaulted by fist and kick blows. They were not armed with any weapon. The motive attributed to applicants is that the applicant No.2 had slapped the victim since he had kissed minor child of the brother of applicants. The applicants were not armed with any weapon. Undisputedly, assault is by fist and kick blows. Investigation is completed and charge-sheet is filed. Prima facie it doesn't appear that there was any intention to commit murder. Post-mortem report is not on record. It has not been produced by prosecution. In any event, considering the

overt act attributed to the applicants it is debatable whether the offence under Section 302 is made out. Considering the factual aspects, case for grant of bail is made out.

ORDER

- (i) Criminal Bail Application No. 983 of 2021 is allowed;
- (ii) The applicants are directed to be released on bail in connection with C.R. No. 477 of 2020 registered with Bhandup Police Station, 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 a month on first Saturday of the month between 11:00 a.m. to 1:00 p.m. till filing of charge-sheet;
- (iv) The applicants shall attend Trial Court regularly on the date of hearing of the case unless exempted by the Court for some reason;
- (v) The applicants are permitted to furnish cash bail security in the sum of Rs.25,000/- each for a period of eight weeks in lieu of surety.
- (vi) Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)