

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

BAIL APPLICATION NO.974 OF 2020

Arfat Allauddin Khan

.. Applicant

Versus

State of Maharashtra

.. Respondent

.....
Mr.Syed A.A. Naqvi, Advocate for the Applicant.

Mr.A.R. Kapadnis, APP for the Respondent – State.

PSI P.B. Desai, Malvani Police Station, Mumbai, present.

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CORAM : PRAKASH D. NAIK, J.

DATED : APRIL 7th, 2021.

P.C. :

Applicant had preferred this application under Section 439 of Cr.P.C. and prayed for bail. He is arrested on 16th September, 2018, in connection with C.R.No.644 of 2018, registered with Malvani Police Station, Mumbai, for the offence punishable under Section 302 of Indian Penal Code ("IPC", for short).

2 First Information Report ("FIR", for short) was lodged on 16th September, 2019, by the uncle of the deceased. According to him, information was received from one Altaf that

complainant's nephew has been assaulted by some person and he is lying injured at Sadesath naka. The complainant reached the spot. The sister of the injured and the complainant came there. They took the injured to hospital. While the injured was being shifted to hospital, the complainant asked him as to who has assaulted him. The injured disclosed that there was a fight between him and Arfat Khan at plot no.58 and that Arfat had assaulted him on his chest with the help of knife, causing injuries to him. Subsequently, injured was declared dead in the hospital. The applicant was arrested. Statements of witnesses were recorded. Weapons allegedly used in commission of crime is recovered. On completing of investigation, charge - sheet is filed.

3 Learned advocate for the applicant submitted that taking the prosecution case as it is, the statements of witnesses would indicate that there could not be any intention to cause death. The incident had occurred at the spur of moment. There is no premeditation. There was provocation from the deceased. It can be said that the applicant has exercised his right of private defence. The injured had attacked the applicant with the wooden log. This fact is borne out from the statements of witnesses as well as the medical examination of the applicant. There is no progress in trial. Applicant is in custody for a period of 2 and ½

years.

4 Per contra, learned APP submitted that it is a clear case of Section 302 of IPC. Postmortem report indicates that there are three injuries on the vital part of the body of the deceased. After the assault, applicant ran away from the place of incident. One more case was registered against the applicant in the past in the year 2017 for an offence punishable under Section 379 of IPC. There are eye witnesses to the incident. There is oral dying declaration of the deceased to the complainant. The applicant was in possession of the weapons in the nature of knife, which was used in assaulting the victim.

5 From the statements of witnesses, it is apparent that there was quarrel between the person who are present at the scene of offence on the issue of consumption of Chilim. The deceased and the applicant had agreed to fight with each other, which came to an end. At that time the applicant did not cause any injury to the deceased. The friends of the applicant and the deceased who were present at the place of incident intervened and put an end to the fight. Thereafter, both of them left the place. Statements of the witnesses further discloses that the victim picked up a wooden log and followed the applicant and started assaulting him. Apparently, there was no provocation from

the applicant for the second incident of assault. He took it by surprise. The victim went on assaulting him. The version of eye witnesses discloses that initially the applicant tried to save himself from the assault by the victim. Thereafter, he removed a knife and gave a blow on the chest of the victim. Postmortem report discloses three injuries. It is pertinent to note that even the applicant has sustained injuries. The medical case papers refers to history of assault. Undisputedly, the assault was started by the victim. It is also relevant to note that fight which had taken place between the applicant and the deceased initially did not result in assaulting by applicant to victim by using any weapon. It is only in the second episode there was use of alleged weapon. It is a debatable issue whether the applicant has exercised his right of private defence or exceeded it. The said issue will be dealt with at the time of trial. Considering the factual aspects of the matter, and, also considering the fact that the applicant is in custody for a period of 2 and ½ years, there is no impediment to grant bail to the applicant on certain conditions.

:: ORDER ::

- (i) Bail Application No.974 of 2020, is allowed;
- (ii) Applicant is directed to be released on bail in connection with C.R.No.644 of 2018, registered

- with Malvani Police Station, Mumbai, on executing P.R. Bond in the sum of Rs.25,000/-, with one or more sureties in the like amount;
- (iii) Applicant 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) Applicant shall not tamper with the prosecution evidence;
- (v) Applicant shall appear before the trial Court on the date of hearing regularly, unless exempted by the Court;
- (vii) Applicant is permitted to furnish provisional cash bail security of Rs.25,000/- for a period of eight weeks, in lieu of surety;
- (viii) Bail Application No.974 of 2020, stands disposed of accordingly.

(PRAKASH D. NAIK, J.)