

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

BAIL APPLICATION NO.3077 OF 2019

Irfan Shabbir Qureshi

.. Applicant

Versus

State of Maharashtra

.. Respondent

.....
Mr.Harshad Meshram, Advocate for the Applicant.

Mr.Y.Y. Dabake, APP for the Respondent – State.

.....

CORAM : PRAKASH D. NAIK, J.

DATED : AUGUST 3, 2021.

P.C. :

This is an application for bail in connection with C.R.No.300 of 2018, registered with Deonar Police Station, Mumbai. First Information Report (“FIR”, for short) was registered for the offences punishable under Sections 326, 341, 504 read with 34 of Indian Penal Code (“IPC”, for short). The victim died on the next day, hence, offence under Section 302 was registered.

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2 Complainant in his FIR dated 20th September, 2018, has alleged that he was sitting alongwith the victim and at that

time the accused were driving auto-rickshaw. They drove close to complainant and victim. Subsequently, the complainant and the victim were accosted and they were assaulted by bamboo stick lying at the place of incident. The victim died on the next day. Investigation was completed and charge-sheet was filed.

3 Learned counsel for the applicant submitted that the applicant is in custody from 27th September, 2018. There is no progress in the trial. Assuming the prosecution case to be true, the offence under Section 302 is not attracted. At the most, the offence could be under Section 326 of IPC. There are no criminal antecedents against the applicant.

4 Learned APP submitted that apart from complainant there is one more eye witness to the incident. Specific role has been attributed to the applicant. The applicant is identified. The applicant and the co-accused had assaulted the victim by bamboo stick. The deceased had sustained head injury, which is the cause of death. The submission that the offence under Section 302 of IPC cannot be attracted, cannot be considered at this stage.

5 Taking the prosecution case to be true, it appears that

there was no intention to commit murder. The incident had occurred on minor altercation between both the sides. The offence was registered under Section 326 of IPC. On account of death of the victim on the next day the offence under Section 302 of IPC was registered. The head injury was due to assault by bamboo stick lying at the scene of the offence. Applicant is in custody for a period of about 3 years. There are no criminal antecedents against the applicant. In view of the factual aspects of the matter, bail can be granted to the applicant on certain conditions.

:: ORDER ::

- (i) Bail Application No. 3077 of 2019, is allowed;
- (ii) Applicant is directed to be released on bail in connection with C.R.No.300 of 2018, registered with Deonar Police Station, Mumbai, on executing P.R. Bond in the sum of Rs.25,000/- with one or more local sureties in the like amount;
- (iii) Applicant is permitted to furnish provisional cash bail in the sum of Rs.25,000/-, for a period of eight weeks, in lieu of surety;

- (iv) Applicant shall report concerned Police Station, Mumbai, once in three month on first Saturday of the month between 11:00 a.m. to 1:00 p.m. till further order;
- (v) Bail Application 3077 of 2019, stands disposed of accordingly.

(PRAKASH D. NAIK, J.)