

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL BAIL APPLICATION NO. 864 OF 2022**

Rehan @ Abdul Yusuf Ali Khan

... Applicant

V/s.

The State of Maharashtra

... Respondent

Mr. Dheeraj Panchange for Applicant.

Mr. R. M. Pethe APP for Respondent-State.

CORAM : A.S. GADKARI, J.

DATE : 30th June 2022.

P.C. :

. This is a successive Application for bail, under Section 439 of the Criminal Procedure Code (for short “Cr.PC”) in Crime No.I-165 of 2016, dated 16th October 2016, registered with Nizampura Police Station, Bhiwandi, District Thane, under Section 302 of the Indian Penal Code (for short “IPC”).

2. Heard Mr. Panchange, learned Advocate for Applicant and Mr. Pethe, learned APP for the state. Perused chargsheet.

3. The earlier Application for bail i.e. Bail Application No. 3420 of 2018 preferred by the Applicant was dismissed as withdrawn by granting liberty to the Applicant to file a fresh Application for bail before the Trial Court, if the trial arising out of aforestated crime, culminated into Sessions Case No.11 of 2017 pending on the file of learned Additional Sessions Judge, Thane, does not conclude within a period of one year from 18th March 2019.

As the trial of the said crime is not concluded within a period of one year from 18th March 2019, the Applicant preferred an Application for bail below Exh-21 before the Trial Court. The Trial Court by its Order dated 12th January 2022 rejected the said Application.

4. Mr. Panchange, learned Advocate for the Applicant submitted that, even as of today the charge in the said case has not been framed. That, Applicant is in jail for last more than five years and eight months and possibility of conclusion of said trial in near future appears to be remote. He further submitted that, from the statements of witnesses and in particular, the eye witness namely Kamalsing @ Ashok N. Makare, it can be inferred that, the alleged crime committed by the Applicant was in a fit of rage arising out of sudden provocation, which ensued due to sudden fight leading to cause injury to the deceased including hurling of the stone on his head. He submitted that, in view thereof, at the most an offence punishable under Section 304(I) of the IPC can be said to have been made out against the Applicant, however certainly not an offence under Section 302 of the IPC. He submitted that, assuming for the sake of arguments the Applicant is held to be guilty under Section 304(I) of the IPC, the maximum sentence prescribed for the said offence is ten years of rigorous imprisonment. That, the Applicant has already undergone pre trial imprisonment of five years and eight months. He submitted that, the Applicant is not ordinary resident of Bhiwandi and in

case this Court releases him on bail, he will not enter the jurisdiction of Nizampura Police Station, Bhiwandi, District Thane or contact the prosecution witnesses. He therefore pryaed that, the Applicant may be released on bail.

5. Mr. Pethe, learned APP on instructions submitted that, the conduct of the Applicant in jail is not satisfactory and the jail authority has submitted report dated 29th June 2022 giving various instances of misbehaviour of the Applicant and creating problems in smooth administration of the concerned Jail. He further submitted that, the Applicant is ordinary resident of Andhra Pradesh and in case Applicant is released on bail, he may not be available for Trial. He however on instructions fairly submitted that, there are no antecedents at the discredit of the Applicant.

6. The Prosecution case in brief is that, the deceased namely Abhimanyu Suryawanshi had taken some money for preparation of Aadhar Card and water tap connection from the Applicant and had also taken hand loan of Rs.2,000/-. That, the deceased used to demand and take petty amounts from the Applicant for some of the other reasons. The deceased, except making Aadhar Card of the wife of the Applicant, did not do any other work. It is alleged that, therefore on the date of incident i.e. on 16th October 2016 between 12.00 p.m. to 4.00 p.m. at the scene of offence, there was a quarrel between Applicant and deceased when the Applicant got enraged and

caused death of deceased Abhimanyu Suryawanshi by pressing his throat and also assaulted him with stone on his head.

7. As per the prosecution, Kamalsing @ Ashok N. Makare is the eye witness to the said incident. The prosecution has also recorded statement of the said witness under Section 164 of the Cr.PC. In his elaborate statement, the said witness has narrated about the facts of payment of money by the Applicant to deceased Abhimanyu Suryawanshi. He has also narrated the events which occurred on 16th October 2016 since 10 a.m. till the fight ensued between the Applicant and deceased and threat given by the Applicant to him to get lost from the said place, failing which to face dire consequences. He has narrated that, on that day at the scene of offence, Applicant and deceased were consuming liquor; he also participated in the said session and subsequently left the said place on a call given to him by a labour. He again reached to the scene of offence after 10 to 15 minutes when he saw that, the Applicant was sitting on the chest of the deceased and was fighting with him. When he tried to intervene and pacify the said fight, the Applicant threatened him with dire consequences and asked him to leave the said place immediately. The deceased was found motionless subsequent thereto at the scene of offence.

8. It is to be noted here that, initially the police have made the said witness as accused however after noting the fact that, he has no role to play

in the said crime have made him a witness. Apart from the aforesaid statement of this witness, there is no other material against the Applicant on record to indicate that, the Applicant in a pre-meditated manner committed the offence alleged against him. Prima-facie it appears that, there is substance in the contention of the learned Advocate for the Applicant in contending that, the offence has taken place due to sudden and grave provocation out of a quarrel and has not taken place in a pre-meditated manner.

9. Applicant is in incarceration as a pre trial prisoner for last more than five years and eight months. Till date, the prosecution has not taken any steps to frame charge against the Applicant. The probability of conclusion of Trial in near future, appears to be remote. In view of the above, this Court is of the opinion that the Applicant can be released on bail.

10. Hence, the following Order :-

(i) Applicant be released on bail in Sessions Case No.11 of 2017, arising out of C.R. No.I-165 of 2016 registered with Nizampura Police Station, Bhiwandi, District Thane, on his furnishing PR. bond of Rs.25,000/- with one or two solvent local sureties in the like amount.

(ii) After his release from jail the Applicant is directed to

attend Nizampura Police Station, Bhiwandi, District Thane, on every first Monday of the month initially for a period of 1 year and thereafter on every first Monday of every 3rd month, i.e. 4 times in a year.

- (iii) Applicant is directed to attend all the dates before Trial Court unless precluded on medical grounds.
- (iv) Applicant is directed not to tamper the prosecution witnesses.

11. Application is allowed in the aforesaid terms.

[A.S. GADKARI, J.]