

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****BAIL APPLICATION NO.2544 OF 2021**

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Mr. Gautam Prakashbhai Maru .. Applicant

Versus

The State of Maharashtra .. Respondent

Mr. Arun Rajput i/b. Shabnam Shaikh for the Applicant.

Smt. A.A. Takalkar, APP for the State.

Mr. S.R. Chaure, PSI, Virar Police Station present.

CORAM: BHARATI DANGRE, J.

DATED : 27th JULY, 2022

P.C:-

1. The applicant is charge-sheeted for the offence punishable under Section 302 of the Indian Penal Code in CR No.572 of 2020 registered with Vasai Railway Police Station.

2. The FIR came to be registered on the complaint of son of one Sunil Thorat, reporting to the police station that his father was assaulted by some unknown person which resulted into registration of CR No.987 of 2020, which invoked Section 307 read with 34 of the IPC.

On 13.11.2020 the injured died which resulted in invoking Section 302 of IPC in the subject CR.

3. In connection with the said death, the applicant was apprehended on 17.11.2020 on the basis of a CCTV footage, which though did not record the actual incident, but has recorded an

incident of the same date, when the deceased was alleged to have been assaulted, abused and threatened the applicant, was seen entering in the building and after some time coming out, with an iron rod.

4. The learned counsel for the applicant would submit that the applicant who reported to Virar Police Station on 07.11.2020 at around 17.00 hours, where he alleged that one unknown person spotted him on platform No.1 of Virar railway station and called him towards him. When he refused to comply, it is alleged that the said person assaulted him by fist and blows and also abused. This resulted in registration of MC No.3526 of 2020.

The learned counsel would submit that he sustained injury in the said incident which is recorded in medical papers as CLW measuring 3 X 0.5 X 0.5 cm on parietal regional of head and small contusion over frontal region.

He has also placed on record the photographs reflecting injury.

5. The learned counsel would submit that as a result of the provocation and he being assaulted, the alleged incident in which he arraigned as an accused has taken place. He, however, denied that he mounted assault of the deceased and in absence of the direct evidence in the charge-sheet, filed on completion of investigation, he claim to be innocent.

6. The deceased was referred to Sir J.J.Group of Hospital after the incident and the injury certificate dated 17.11.2020 refer to two injuries; one deep lacerated wound on right face and one blunt

trauma. Though these injuries are described as grievous, but they are not responsible for his death since on 13.11.2020 when he expired, the cause of death has been ascertained as ‘Terminal Cardiopulmonary Arrest with Type I Respiratory Failure Due to Atrioventricular Hemorrhage, Subarachnoid Hemorrhage Secondary to Head Trauma, with Covid Pneumonitis with Acute Kidney Injury with Septic Shock’.

The final diagnosis of death has been given as “Polytrauma Secondary to assault”.

7. It is apparent that no autopsy was conducted of the deceased, since the patient was Covid positive.

In the wake of the above, it cannot be conclusively said that the injury sustained by the deceased, which is reflected in the certificate issued by Sir J.J.Group of Hospitals on 17.11.2020, on the face and on the left eye in form of a deep lacerated wound is responsible for the death of the injured.

8. In any case, the prosecution will have to establish during the course of the trial that the injuries caused by the applicant resulted in his death. From the history that has been referred to in the injury certificate, it is revealed that the person was found in unconscious state and had sustained multiple injuries and was given preliminary treatment at Vijay Vallabh Hospital. However, barring the certificate dated 17.11.2020, there is no other injury certificate on record.

9. In the wake of the above material compiled in the charge-sheet, the applicant deserve his release on bail.

The observations made above are *prima facie* in nature and are restricted for deciding of the present application and shall not bind or influence the learned Judge, while trying the accused.

10. Hence, the following order.

ORDER

- (a) Application is allowed.
- (b) Applicant - Mr. Gautam Prakashbhai Maru shall be released on bail in connection with C.R.No.572 of 2020 registered at Vasai Railway Police Station on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.
- (c) The Applicant shall mark his attendance to the Investigating Officer on first Monday of the trimester between 10.00 a.m. to 1.00 p.m..
- (d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer. The Applicant should not tamper with evidence.

(SMT. BHARATI DANGRE, J.)