

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

CRIMINAL BAIL APPLICATION NO.1531 OF 2020

Jahangir Abdul Salam Shaikh Applicant

versus

State of Maharashtra Respondent

.....

- Mr.V.T. Dubey i/b. V.T. Dubey & Associates, Advocate for Applicant.
- Smt.A.A. Takalkar, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 17th JANUARY 2022

(through video conferencing)

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.470/2019 dated 02/10/2019 registered with Vakola Police Station, Mumbai, under section 302 of the Indian Penal Code. The Applicant was arrested on 02/10/2019 and since then he is in custody.

2. Heard Mr.V.T. Dubey, learned counsel for the Applicant and Smt.A.A. Takalkar, learned APP for the State.

MANUSHREE
V
NESARIKAR
Digitally
signed by
MANUSHREE
V
NESARIKAR
Date:
2022.01.21
16:38:34
+0530

3. The FIR is lodged by one Dhirajkumar Chaurasiya. He has stated that on 02/10/2019 at about 11 a.m. when he was in his Rikshaw near Vakola Pipe Line Road, Santacruz East, Mumbai. He saw that a woman was running in the opposite direction. She was chased by a man. He caught hold of her and slapped her. She fell down. That person picked up a stone block lying nearby and gave a blow on her face. He stopped there on the spot. The people in the locality called police. They came on the spot. The woman was taken to hospital. The person who had given that blow was taken in custody. The police asked his name. He gave his name as Jahangir Abdul Salam Shaikh, who is the present Applicant. On this basis FIR is lodged.

4. Learned counsel for the Applicant submitted that the Applicant was brother of the deceased. Though there are allegations that there was property dispute, in the entire charge-sheet there is nothing to support these allegations. The deceased was causing nuisance to the residents and on one occasion the

Applicant got angry and this incident took place. He submitted that there was no intention to commit murder of the deceased.

5. Learned APP opposed the application. She has relied on the charge-sheet.

6. I have considered these submissions. Apart from the first informant, there are other witnesses whose statements are part of the charge-sheet. One Suresh Pandurang Shirodkar, whose statement was recorded on 25/10/2019 was a neighbour. He has given the history. He has stated that the Applicant and the deceased used to quarrel with each other. The deceased used to abuse residents of the chawl. In the past, the deceased had assaulted her sister-in-law. She used to threaten the residents that she would set the entire chawl on fire. They had lodged NC complaint against her. In short, she had created a nuisance. On the date of incident he saw that the deceased was lying on the road. The Applicant was sitting nearby.

7. The other witness Salim Noormohammad Ansari has stated that he had seen the incident and he had also seen the Applicant sitting at the spot. This witness helped him and then after some time police came there. The Applicant's son has given a statement that at about 10.45 in the morning on that day, the deceased was holding a bamboo and was abusing the residents and she was also abusing the Applicant. The incident has occurred because of this quarrel. There is another statement given by one Sabistina Carmlin Joseph Dias. She also spoke about the nuisance and the danger caused by the deceased herself.

8. Considering all these statements, it does appear that that incident is the result of a sudden quarrel between brother and sister. There is no pre-meditation. The Applicant was not carrying any weapon. He had just picked up a stone and had given one blow. The offence may not fall within the meaning of 'murder' as defined under section 300 of the IPC. The incident had occurred on spur of moment. The Applicant had not acted in a cruel manner. Only one fatal blow was given as is evidenced from the post-mortem notes. Though there are 11 injuries, but

there was one fatal injury caused by the Applicant on the face, which caused fracture of fronto temporal bone.

9. The Applicant had not tried to run away from the spot. He was sitting there in a state of shock after the incident. Taking all these factors into account, the Applicant deserves to be released on bail.

10. Hence, the following order :

ORDER

- (i) In connection with C.R.No.470/2019 dated 02/10/2019 registered with Vakola Police Station, Mumbai, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- (ii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)