

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

CRIMINAL BAIL APPLICATION NO. 2975 OF 2021

Bablu @ Mohd. Mustaq Ansari
s/o. Mohammad Raees

.... Applicant

Versus

The State of Maharashtra

.... Respondent

Mr. Shubham S. Upadhyay for Applicant.

Mr. Makarand G. Patil, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 03rd JANUARY, 2022

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No. 471 of 2018 registered at Kalyan Taluka police station, on 01/12/2018 under sections 304 and 504 r/w. 34 of the Indian Penal Code (for short 'IPC').

2. Heard Shri. Shubham Upadhyay, learned counsel for the applicant and Shri. Makarand Patil, learned APP for the State.

3. The First Information Report (for short 'F.I.R.') is lodged by one Mohammad Kasim Mohammad Husain Shaikh on

01/12/2018. He has stated that, one Akbar Anwar Khan @ Khan Chacha was working as a helper and was residing behind his chawl. On 07/10/2018 the first informant was consuming liquor near a liquor shop. At that time, the applicant had come there. He told the informant that Khan Chacha had taken away Rs.20000/- from under his pillow. He was abusing Khanchacha. After some time, Khan chacha came there. The applicant got angry and started fighting with him. There was scuffle between them. The applicant pushed him on a wall because of which Khanchacha suffered bleeding head injury. At that time, the informant told the applicant to take Khan chacha to a dispensary. At that time, the applicant and his brother took Khan chacha to some distance. The informant thereafter went to Govandi. After 4-5 days he came to know that Khan chacha was taken to hospital at Titwala. His health deteriorated, therefore, he was to be shifted to KEM hospital, but considering the emergency he was taken to Kalwa Hospital, where he was declared dead at the time of admission. On these allegations the F.I.R. was lodged.

4. Learned counsel for the applicant submitted that, the

F.I.R. is lodged belatedly. There was only one alleged eye witness who has given his statement on 01/12/2018. There is no explanation offered by him. There was no premeditation, no preparation, no intention to cause death. Even knowledge of such eventuality can not be present. He submitted that, considering weak nature of evidence the applicant be released on bail. The applicant is in custody from the date of arrest i.e. from 08/02/2019.

5. Learned APP opposed this application. He submitted that the applicant was aware of the head injury and yet he left Khan chacha to suffer loss of blood which ultimately resulted in his death. Therefore, applicant's responsibility is made out from the charge-sheet.

6. I have considered these submissions. The postmortem notes show that, though there were other minor abrasions, main cause of death was head injury. Even as per the version of the eye witness, this head injury was caused because the applicant had pushed the deceased on a wall. There was no premeditation and police have applied section 304 of IPC. From the narration also it

does not appear that the applicant had an intention to cause death or such bodily injury which could have resulted in death of the deceased. Other serious allegation against him is that, he did not take the deceased for prompt treatment. The charge-sheet shows that, at around 12.15p.m. in a very short time from the time of incident the deceased was carried to various hospitals. The deceased was found unconscious in a dilapidated room. Nobody had seen the applicant or his brother taking the deceased to that room. The only evidence against the present applicant is that of the informant who has given his statement on 01/12/2018 and no explanation for delay is offered by him. The incident is dated 07/10/2018 and F.I.R. was lodged on 01/12/2018. In the meantime, he had not narrated this incident to anybody else. Therefore, evidence against the present applicant is weak. He is in custody since 08/02/2019. In this view of the matter, the applicant deserves to be released on bail.

7. Hence, the following order :

ORDER

- (i) In connection with C.R.No. 471 of 2018 registered at Kalyan Taluka police station, 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.)