

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION (BA) NO.1359/2021

Mohd. Javid Sheikh s/o Mohd. Yusuf Sheikh

...Versus...

The State of Maharashtra, Through P.S.O., Police Station Kapil Nagar, Dist.
Nagpur

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri C.R. Thakur, Advocate for applicant
Shri I.J. Damle, APP for non-applicant/State

CORAM : AVINASH G. GHAROTE, J.

DATE : 28/04/2022

1. Heard Shri Thakur, learned Counsel for the applicant and Shri Damle, learned Additional Public Prosecutor for the non-applicant/State.

2. The applicant has been arraigned for the offence punishable under Section 302 of Indian Penal Code (IPC) in Crime No.135/2021, registered with Police Station Kapil Nagar, Nagpur. The incident is dated 02/04/2021, on which date itself, the applicant has been arrested. The charge-sheet has been filed on 15/06/2021.

3. Shri Thakur, learned Counsel for the applicant submits, that there are no eyewitnesses to the alleged incident

and the entire case of the prosecution is based upon the CCTV footage of the cameras, installed on the spot, which indicates, that there was a quarrel between applicant and the deceased and when the deceased came down from the first floor, the camera shows the shadow of a person picking-up something and throwing it down. The death of the deceased has been caused by head injury, which is claimed to have been caused due to a brick found near her body. He, therefore, submits that even presuming the incident to be correct, there was no intention on part of the applicant, nor was there any premeditation to commit the offence and the throwing of the brick, has taken place on the spur of the moment, considering which position, the applicant is entitled for bail.

4. Shri Damle, learned Additional Public Prosecutor the non-applicant/State opposes the application and submits that though there are no actual eyewitnesses, however, the CCTV footage of the various cameras, installed in the building, indicates that the demise of the deceased can be directly attributed to the applicant due to his action of throwing a brick on the head of the deceased, which is the cause of death, as per the post mortem report, considering which, the application needs to be rejected.

5. The incident is dated 02/04/2021, in which, the deceased, who was residing with the applicant, who was on

the ground floor, was called by the applicant upstairs, whereupon she gave an abuse to him and went up [statement of Shahanaz Parveen Abdul Sattar (pg.72)]. It appears that thereafter when she reached the first floor, there was a quarrel between them, voices of which were heard by the residents on the ground floor. The CCTV footage shows that the deceased snatched away the mobile of the applicant, on which, he was speaking with someone, talked on the mobile and came down stairs. The CCTV footage further indicates that when deceased had come down, the shadow of a person picking-up something and throwing it down is seen therein. The post mortem report indicates the cause of death as a head injury and the brick, which has caused it, was lying besides the body of the deceased. The applicant himself, is said to have been instrumental in taking the deceased to the nearest hospital. This clearly indicates an absence of any intention as the demise of the deceased appears to have been caused due to a brick, which was thrown from upstairs, in view of which, the applicability of Section 302 of IPC, *prima facie*, would appear to be doubtful, considering which, a case for bail is made out. Hence, the following order.

ORDER

- (i) The Criminal Application is allowed. The applicant/Mohd. Javid Sheikh s/o Mohd. Yusuf be released

on bail in Crime No.135/2021 for the offence punishable under Section 302 of IPC, registered with Police Station Kapil Nagar, Nagpur on his executing PR. bond in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) with two solvent sureties in like amount.

(ii) The applicant shall not directly or indirectly make any attempt to influence the prosecution witnesses or otherwise tamper with the evidence.

(iii) The applicant shall remain present on each and every date before the learned Sessions Court during the course of trial and shall ensure that the trial is not protracted on his count.

(iv) Violation of any of the above conditions, shall result in cancellation of bail.

(AVINASH G. GHAROTE, J.)

Wadkar