

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

BAIL APPLICATION NO. 618 OF 2023

Amey Rajesh Darekar

... Applicant

v/s.

The State of Maharashtra

.... Respondent

Mr. Raja Thakare, Sr. Advocate a/w. Mr. Akash Kavade and
Mr. Siddharth Jagushte i/b. Ms. Aishwarya Sharma for the Applicant.
Mrs. A.A. Takalkar, APP for the State.
Mr. Ashwinkumar Deore for the Intervenor.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 12th APRIL, 2023.

P. C. :-

. This is an Application under section 439 of Cr.PC. filed by the aforesaid Applicant who is arrested in C.R.No.1616/2022 registered with Dahisar Police Station, Mumbai for offences punishable under sections 307 r/w. 34 of the Indian Penal Code.

2. Heard learned counsel for the Applicant, learned APP for the State and learned counsel for the Intervenor. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

3. The aforesaid crime was registered pursuant to the FIR lodged by

Munish Shrinath Singh, the father of the injured. The facts narrated in the FIR prima facie indicate that the injured and the Applicant herein were in love with each other. The first informant claims that the Applicant would assault the injured under the influence of alcohol. On 12/11/2022, at about 04:30 p.m., the injured left the house on the pretext of going to the office. She did not return home and did not receive phone calls. On 13/01/2022, at about 08:00 a.m., the Complainant saw the injured lying on the bed in the living room. Dinesh Todai Dhivar, the domestic helper told him that the mother of the Applicant had brought the injured home and had told him that she had tried to commit suicide. The first informant had stated that his daughter had sustained head injury. She was unable to speak or get up and was not responding, except for asking water. The father of the injured lodged the FIR against the Applicant and his mother alleging that they had attempted to commit murder of his daughter. Pursuant to the said FIR, the aforesaid crime came to be registered.

4. The statement of Devesh Anil Lad, who was in the company of the injured and the Applicant, prima facie reveals that on 12/11/2022, he met the Applicant and the injured at Broadway, Kandivali (E). They told him that they would have a party at terrace of La-Beleza building

wherein the said witness was residing. The Applicant brought a wine bottle and that they went on the terrace of La-beleza building and at the instance of the Applicant, they sat on the terrace of the water tank. They were on the terrace of the water tank till about 02:00 a.m. At about 02:00 a.m., they went to Sanjog Bar and Restaurant and consumed some more alcohol and some eatables and once again went to the terrace. He has stated that he returned home at about 04:00 to 04:30 a.m. He claims that the Applicant as well as the injured were under the influence of alcohol. The Applicant dropped him to his flat on the 13th floor. On the next morning, his brother informed him that he had seen the Applicant and the injured near the building and that the injured had sustained bleeding injury on the leg and head and that watchman had arranged a rickshaw and told him to take her to the hospital.

5. The records reveal that the Applicant, injured and the witness – Devesh were sitting on the terrace of the water tank and having drinks. The witness – Devesh was in the company of the Applicant and the injured till about 04:00 to 04:30 a.m. At about 06:15 to 06:30 a.m., the Applicant requested the security guards Uday Deshmukh and Irfan Khan to help him take the injured from the lift. They have stated that

the injured was sitting in the lift and they lifted her and made her sleep in the lobby of the basement. The Applicant thereafter got an autorickshaw and took her from the Society premises.

6. The records reveal that the injured has suffered lacerated wound on the occipital region of the head with fracture of D₇ – D₈ vertebrae and is completely bed bound. The injured has stated that she along with the Applicant and the witness Devesh had been on the terrace of La-Beleza Society. They were sitting on the water tank and having drinks. She claims that she had cocktail and was intoxicated. She claims that the Applicant was her friend and cared for her. The statement of the injured is of no assistance as she was in highly inebriated condition to know what transpired between them. There was no eye witness to the incident and whatever transpired between them was within exclusive knowledge of the Applicant which can only be explained in the course of trial. Until such time, the complicity of the Applicant needs to be decided on the basis of the other circumstances on record.

7. The scene of offence panchanama reveals that there were blood stains near the ladder to the water tank as well as on the water tank.

The terrace/roof of the water tank was 15x20 feet, with adjoining roof of the lift room of 4x6 feet. There was a three feet height steel railing between the water tank and the lift room. The difference in height between the terrace of the lift room and the water tank was 03 feet. There were blood stains on the parapet wall, wall of the lift room, terrace as well as on the terrace of the lift room. Besides, there were empty liquor bottles, water bottles, cigarette butts, empty food containers, etc. on the terrace of the lift room.

8. The material on record reveals that the injured was in the company of the Applicant. They were sitting on the terrace of the water tank and having drinks. The scene of offence panchanama indicates that there were blood stains on the water tank wherein the injured and the Applicant were sitting. This fact prima facie indicate that the injured had sustained bleeding injury while she was sitting on the terrace of the water tank. This circumstance prima facie rules out the possibility of an accidental fall from the terrace.

9. The medical records also reveal that the injured had a laceration on the occipital region of the head, with fracture of D₇ – D₈ vertebrae. Skull bone fracture with intracranial contusion. In addition to the head

injury on the occipital region of the head, there were hesitation marks on left side of the neck and left fore arm. There were multiple bruises and abrasions on the anterior side of the shoulder and the knees. The location of the injury i.e., the head injury which was on the posterior side and the other injuries which were on the anterior side, prima facie cast a doubt on the story of an accidental fall.

10. The records reveal that the Applicant took the injured to his residence and thereafter, his mother dropped her home at about 08:00 a.m. and told the domestic help that the injured had attempted to commit suicide. The material on record does not indicate that the injured was in a depressed state of mind or that she entertained suicidal thoughts.

11. The conduct of the Applicant in not taking the injured to the hospital and taking her to his residence and thereafter dropping her home with a story of suicide is prima facie not in consonance with innocence of the Applicant. A young girl is in a vegetative stage. The circumstances, particularly finding of the blood stains on the terrace of the lift room prima facie indicates that she had sustained injuries even prior to her fall. These circumstances prima facie point towards the

guilt of the Applicant.

12. In the facts and circumstances of the case, considering the gravity of the offence, I am not inclined to exercise discretion under section 439 of Cr.P.C. in favour of the Applicant. Hence, the Application is dismissed.

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JAYANI

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(SMT. ANUJA PRABHUDESSAI, J.)