

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

BAIL APPLICATION NO.3353 OF 2022

Akbar Yusuf Shaikh

...Applicant

Versus

The State of Maharashtra

...Respondent

...

Ms Afreen Shaikh for the Applicant.

Mr. S.H. Yadav, APP for the Respondent -State.

Mr. Rajendra N. Loke, PSI, Sakinaka Police Station, Mumbai, present.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED: 4th AUGUST, 2023.

P. C. :-

1. By this application, the Applicant, who is facing trial in Sessions Case No.315 of 2022 pending on the file of learned Additional Sessions Judge, Borivali Division, Dindhsohi, Mumbai, seeks enlargement on bail. The aforesaid case arises from C.R. No. 1081 of 2021 registered with Sakinaka Police Station, Mumbai, for the offences punishable under Sections 304(2) and 504 r/w 34 of the IPC.

2. Heard Ms Afreen Shaikh, learned counsel for the Applicant and Mr. S.H. Yadav, learned APP for the Respondent-State. 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 Sagar Gurav. The facts narrated in the FIR prima facie reveal that on 23/10/2021 at about 12.05 a.m. the Applicant, Pranil and the deceased Mukesh were in a liquor shop. It is alleged that the Applicant and Pranil had abused Mukesh and thereafter the Applicant dragged Mukesh out of the liquor shop and assaulted him with kicks and blows. Said Mukesh was unconscious and was taken to the hospital but he was declared dead. Initially the crime was registered for the offences punishable under Sections 302 and 504 r/w 34 of the IPC. Upon completion of the investigation charge-sheet has been filed for offences under Sections 304(2) and 504 r/w 34 of the IPC.

4. The medical record prima facie reveals that the deceased had suffered two abrasions -one on the right side of the nose and the other on the left knee. There were no other external injuries on his body. Brain was congested and oedematous. Petechial hemorrhages present in membrane. The Doctor had reserved the opinion as regards cause of death. On 16/03/2023 this Court had directed the prosecution to place on record the final opinion as regards cause of

death. No such certificate is placed on record till date. Hence, at this stage there is no material to indicate that the death was homicidal. Be that as it may, the incident was not pre-planned. The Applicant was not armed with any weapon and he had not inflicted any injury on the vital part of the body. The question whether the act committed by the Applicant has caused the death or not is a matter of trial.

5. It is stated that the Applicant is in custody since 24/10/2021. Considering the large pendency, there is no possibility of the trial concluding within a reasonable period. Hence, the application is allowed on the following terms and conditions:-

(i) The Applicant, who is facing trial in Sessions Case No.315 of 2022 pending on the file of learned Additional Sessions Judge, Borivali Division, Dindhsohi, Mumbai, arising from C.R. No. 1081 of 2021 registered with Sakinaka Police Station, Mumbai, is ordered to be released on cash bail in the sum of Rs. 40,000/- for a period of four weeks;

(ii) The Applicant shall within the said period of four weeks furnish PR bonds in the sum of Rs.40,000/-

with one or two sureties to the like amount;

(iii) The Applicant shall report to the concerned police station once in three months on the first Monday of the month till framing of the charge;

(iv) The Applicant shall not interfere with the witnesses or tamper with the evidence in any manner;

(v) The Applicant shall keep the Trial Court informed of his current address and mobile contact number, and/or change of residence or mobile details, if any, from time to time;

(vi) The Applicant shall co-operate with the conduct of the trial and attend the trial Court on all dates, unless exempted.

6. Bail Application stands disposed of accordingly.

(SMT. ANUJA PRABHUDESSAI, J.)