

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 3844 OF 2022

Ramsheela Fulkaran Paswan

... Applicant

V/s.

State of Maharashtra

... Respondent

.....

Mr. Nitin Sejpal, Senior Advocate a/w. Mr. Siddarth Gharat, Ms. Sakshi Jha and Mr. Kunal Thakkar, Advocate for Applicant.

Ms. P. N. Dabholkar, APP for Respondent-State.

PSI- Mr. Swapnil Bhamre, Bhiwandi City Police Station present.

.....

CORAM : SHIVKUMAR DIGE, J.

DATE : 7 OCTOBER, 2023

P C:-

1. By this Application, Applicant is seeking bail in C.R.No. 337 of 2017 registered with Bhiwandi City Police Station for the offence punishable under Sections 302, 324, 452, 143, 147, 148, 149, 504 and 506 of Indian Penal Code (for short "IPC").

2. It is the prosecutions' case that on 19.10.2017 at about 9.00 p.m. complainant and his friend Kamlesh were proceeding to Dhanalaxmi Hotel, for a dinner at that time Kamlesh Kumar's acquaintance was standing there with his associates. That person

was the Applicant. Applicant stopped Kamlesh Kumar and asked him why he was not returning money given by him. Thereafter there was altercation between them, then applicant told the Kamlesh Kumar that “don’t quarrel with him, else he will kill him, and told him to go to the factory, he will come there.” Due to threat of the Applicant, complainant and Kamlesh Kumar came back to their factory without taking dinner. After some time Applicant came at factory with co-accused and started abusing loudly. At that time, Kamlesh Kumar came out of factory and asked the Applicant, that why he was abusing. At that time, Applicant had assaulted Kamlesh Kumar with wooden bamboo on his head and Applicant was saying to Kamlesh that you will not be alive. The co-accused assaulted Kamlesh Kumar with fist and blows. It is alleged that when complainant tried to save the Kamlesh Kumar, Applicant also assaulted complainant with said wooden bamboo on his shoulder and head. Thereafter, Kamlesh Kumar and first informant were admitted in hospital. There doctor declared Kamlesh Kumar dead.

3. It is the contention of learned Senior Counsel for the Applicant that, Applicant is behind bar more than six years. Applicant has been falsely implicated in this case. At the most, the case of Applicant would fall under Section 304(Part-I) or 304(Part-II) of IPC. The trial has commenced in the year 2020, prosecution

witness No.3 is under cross. Yet his cross is not completed and there is no progress in the trial. There was only one blow given by the Applicant to the deceased, Applicant be released on bail. Learned Senior Counsel further submitted that other co-accused have been released on bail.

4. Learned APP submitted that there is direct evidence against the Applicant which shows the involvement of the Applicant in the crime. Applicant had assaulted the deceased with wooden bamboo on his head due to the said assault, Applicant is died. There is *prima facie* case against the Applicant. Mere Applicant is behind bar more than six years cannot be a ground to release the Applicant on bail. Hence, requested to reject the Application.

5. I have heard both the learned Counsel. Perused the FIR and charge-sheet. The incident is witnessed by first informant. It appears from record that, initially quarrel was taken place between the Applicant and deceased. Applicant had threatened deceased that he will kill him, when he will go to his factory and due to threat of Applicant, deceased came to the factory with first informant without taking dinner. After some time, Applicant and co-accused came to the factory of deceased and started abusing him. When deceased asked them why they are abusing at that time, Applicant and co-accused assaulted the deceased. It shows that Applicant had

pre-planned to kill the deceased and he came to the incident spot with wooden bamboo in his hand. He gave the blow of that wooden bamboo on the head of deceased with intention to kill him. It shows Applicant had intention to kill the deceased. There are eye witnesses who witnessed the incident. Applicant is charged under Section 302 of IPC. The punishment for this section is life imprisonment or death sentence. Applicant is behind bar more than six years cannot be a ground to release him on bail.

6. In view of the above, I pass following order:

(i) Application is rejected.

SONALI
SATISH
KILAJE

Digitally signed
by SONALI
SATISH KILAJE
Date:
2023.10.17
17:40:41
+0530

(SHIVKUMAR DIGE, J.)