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Uday S. Jagtap

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

CRIMINAL BAIL APPLICATION NO. 1763 OF 2022

Raju Bhagwan Bariya

.. Applicant

Vs.

The State of Maharashtra

.. Respondent

.....

Mr. P.K. Sanghrajka a/w Siddhesh Samel, Shirish Sawant i/b Rajeev Sawant for the Associate

Ms. Anamika Malhotra, APP for the respondent – State

Mr. S.A. Pawar, PSI, Juhu Police Station present in Court

MR. Dattatray Masvekar, PI EOW present in Court

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CORAM : PRITHVIRAJ K. CHAVAN, J.

DATED : 30th JANUARY, 2024

P.C.

1. This is an application under Section 439 of the Cr.P.C. seeking bail in connection with C.R. No.589 of 2021 registered with Juhu Police Station, Mumbai for the offences punishable under Section 302 of the Indian Penal Code r/w Section 37(1) r/w 135 of the Maharashtra Police Act.

2. The facts in brief are as follows.

3. It is the case of murder of the younger brother at the hands of

elder brother on the fateful day of 16th September 2021. The prosecution case is that a day before the incident in question, there was heated exchange of words between the deceased and the accused, upon which the deceased slapped the applicant, who was younger to him. On 16th September 2021 around 6.00 p.m. when the first informant namely, Bipin Patel returned home in his autorickshaw after visiting his in-laws house pursuant to immersion of Ganpati idol, he noticed deceased lying idle around mid-night. He was taken to the Cooper Hospital in an autorickshaw. The Doctors declared him dead before the deceased was admitted. There was a small stab wound found beneath his left nipple.

4. The Investigation Officer held investigation into the crime. He visited the scene of occurrence. He recorded spot panchanama as well as statements of the witnesses. The dead body was sent for autopsy. The report of the autopsy reveals following injuries.

“1. Linear abrasion of size 0.5 cm x 0.2 cm present over right infraorbital region, reddish.

2. Linear abrasion of size 2 cm x 0.2 cm present over right maxillary region, vertically oblique, reddish.

3. Incised wound of size 1.5 cm x 0.2 cm x muscle deep present over upper lip on medical aspect, vertically

oblique, tailing present over upper aspect, margin clean cut, reddish.

4. *Abrasion of size 3cm x 2 cm present over chest on upper aspect of sternum, reddish.*

5. *Stab wound wedge shape, penetrating (stab) wound of size 1cm x 0.4 cm x thoracic cavity deep placed obliquely over left side of chest lower end being 2.5 cm below and medial to left nipple and upper end 3cm medial to left nipple, margins clean cut, reddish. Track of wound as bellow – skin --- subcutaneous tissue – pectoralis major muscle --- intercostal muscle (between 4th and 5th rib) ---- left parietal pleura --- left pleural cavity ---- pericardium----- left atrium---left atrial cavity.*

6. *Abrasion of size 2cm x 1 cm present over lower aspect of both knee, transverse, reddish.*

7. *Abrasion of size 1cm x 0.5 cm present over posterior aspect of right forearm over middle 1/3, reddish.”*

5. Those were antemortem injuries. The Viscera and the samples were sent for chemical analysis. The cause of death as per the autopsy report is “shock due to stab injury”.

6. During investigation, while the applicant was in custody, pursuant to his statement recorded under Section 27 of the Evidence Act, a knife came to be recovered at his instance. The Forensic Science Laboratory report in respect of the same is inconclusive, in the sense, the evidence in that regard does not

indicate that the knife had blood stain of the deceased. Be that as it may.

7. Learned Counsel for the applicant has, therefore, prays for release of the applicant on bail not only on the ground that there is no material, much less, convincing material to connect the accused with the crime, so also, apparently there is no motive. It is submitted that he is HIV positive.

8. Learned APP, on the other hand, though objects prayer of the applicant to enlarge him on bail but in the facts and circumstances, it appears that the prosecution is not strongly objecting the prayer.

9. Statement of the mother of the deceased and the applicant *prima facie* indicates that on 16th September 2021 when the deceased had demanded some amount from the applicant he refused, upon which the deceased said that the applicant never pays any amount to the mother for her day-to-day expenses. Ultimately, the quarrel resulted into a slap by the deceased to the applicant. Perhaps, it might be due to provocation, the applicant murdered his brother.

10. Needless to state that these are *prima facie* observations *sans* merits of the case only to the extent of considering application for bail. The trial Court shall not get influenced with the observations made hereinabove.

11. Considering the overall material on record and the nature of evidence proposed to be adduced by the prosecution during the trial and also taking into consideration the fact that the applicant has been in custody ever since his arrest on 17th September 2021 with no chances of trial being concluded in the near future, he needs to be enlarged on bail and, therefore, following order is expedient.

ORDER

- (i) The application is allowed.
- (ii) The applicant is released on executing a P.R. bond in the sum of Rs.20,000/- with one or two sureties in the like amount to the satisfaction of the Additional Sessions Judge, Dindoshi in C.R. No. 589 of 2021 registered with Juhu Police Station, Mumbai.
- (iii) The applicant shall attend Juhu Police Station, Mumbai once in 15 days on every Saturday between 8.00 a.m. to 10 a.m. till the charge is framed.
- (iv) After framing the charge, the applicant shall attend the

trial Court on each date.

(v) The applicant shall furnish his cell number as well as residential address to the Investigating Officer and shall inform any change in the Cell number or the residential address.

(vi) The applicant shall not leave the jurisdiction of the Court until the trial is concluded.

(vii) Needless to say that breach of any of the conditions would entitle the prosecution to pray for cancellation of bail.

12. At this stage, learned Counsel for the applicant request for releasing the applicant on furnishing a cash security till the surety is arranged.

13. The applicant be released on furnishing a cash security in the sum of Rs.20,000/- for a period of four weeks.

14. The application stands disposed of in the aforesaid terms.

(PRITHVIRAJ K. CHAVAN, J.)