

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3106 OF 2023

SANTOSH
SUBHASH
KULKARNI

Digitally signed by
SANTOSH SUBHASH
KULKARNI
Date: 2024.02.23
19:57:34 +0530

Anthony Benjamin Fernandes (Antonio) ...Applicant

Versus

State of Maharashtra ...Respondent

Mr. Alankar Kirpekar, a/w Ms. Lalita Rajguru a/w Ayush
Tiwari, i/b Laita Rajguru, for the Applicant.

Ms. Ranjana Dinesh Humane, APP for the State/Respondent
No.1.

CORAM: N. J. JAMADAR, J.

DATED: 22nd FEBRUARY, 2024

ORDER:-

1. Heard the learned Counsel for the parties.
2. The applicant, who is arraigned in CR No.699 of 2022, registered with Byculla Police Station, Mumbai, for an offence punishable under Section 302 of the Indian Penal Code, 1860 ("the Penal Code"), for having allegedly committed murder of his aunt (the deceased) has preferred this application to enlarge him on bail.
3. The first informant is the wife of the applicant. The applicant was allegedly given in to the vice of consuming liquor. The applicant used to rake up quarrels with the deceased.

4. A month prior to the alleged occurrence a notice was served on the premises, wherein the applicant and deceased were residing, in respect of the loan which Sebastian, the brother of the applicant, has raised. The applicant had raked up quarrels with the deceased for giving consent to Sebastian for raising the loan by giving security of the house premises.

5. On 23rd August, 2022 at about 5.30 am. the applicant came home in a drunken state. The applicant allegedly started abusing and assaulting the deceased. The first informant tried to intervene and restrain the applicant. However, the applicant continued to unleash fist and kick blows. The first informant further alleged that at about 8.30 am. the deceased faced difficulty in breathing. She was shifted to KEM Hospital; where, upon examination, she was declared dead.

6. The applicant came to be arrested on 24th August, 2022.

7. The learned Counsel for the applicant submitted that there is no material to indicate that the applicant had intended to cause the death of the deceased or such injury as was sufficient in the ordinary course of nature to cause death. The inquest and the Final Cause of Death Certificate do not indicate that the deceased had sustained such injuries

which were sufficient in the ordinary course of nature to cause death.

8. In opposition to this, the learned APP submitted that the applicant had assaulted a 65 year old lady, who was almost bedridden. The learned APP laid emphasis on the facts that the applicant had been raking up quarrels with the deceased since long and a number of NC complaints were also lodged. Therefore the applicant does not deserve to be enlarged on bail as the wife of the applicant is the main eye witness. If the applicant is released on bail, there is a possibility of tampering with evidence and threatening the witnesses, urged the learned APP.

9. I have perused the allegations in the FIR and the statements of the eye witness recorded during the course of investigation. It does not appear that apart from the first informant any other witness claimed to have seen the alleged occurrence. It further appears that the first informant has subsequently declined to support the prosecution version to the full extent when her statement came to be recorded under Section 164 of the Code of Criminal Procedure, 1973 ("the Code").

10. I have also perused the PM Report and the Final Cause of Death Certificate. The PM Report indicates that there were contusions and abrasions on the person of the deceased. The Final Cause of Death Certificate indicates that in the opinion of the Medical Officer, the deceased died “on account of acute coronary insufficiency following non fatal blunt force injuries in a case of coronary artery disease (unnatural)”.

11. *Prima faice*, there is material to show that the applicant had raked up quarrel with the deceased and assaulted her. However, the injuries sustained by the deceased, which find mention in the Column 17 of the PM Report, do not indicate that any of the injuries was grievous. It is true the Medical Officers have opined that the deceased met an unnatural death. However, in the facts of the case, whether there was intention or knowledge on the part of the applicant to cause the death of the deceased or such injury as was sufficient in the ordinary course of nature to cause the death of the deceased, would be a matter for adjudication at the trial. The applicant has been in custody since 24th August, 2022. Investigation is complete. Charge-sheet has been lodged. The statement of the first informant under Section 164 of the Code has also been recorded.

12. In the aforesaid view of the matter and having regard to the period of incarceration, I am inclined to exercise the discretion in favour of the applicant.

13. Hence the following order:

: O R D E R :

- (i) Application stands allowed.
- (ii) The applicant be released on bail in CR No.699 of 2022, registered with Byculla Police Station, Mumbai, on furnishing a P.R. Bond in the sum of Rs.30,000/- with one or more sureties in the like amount.
- (iii) The applicant shall mark his presence at the Byculla Police Station on the first Monday of every alternate month in between 10.00 am. to 12.00 noon till conclusion of the trial.
- (iv) The applicant shall not tamper with the prosecution evidence. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any police officer.
- (v) On being released on bail, the applicant shall furnish his contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.

(vi) The applicant shall regularly attend the proceedings before the jurisdictional Court.

(vii) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

Application stands disposed.

[N. J. JAMADAR, J.]