



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3460 OF 2023**

Durgesh Babu Derbere
versus
State of Maharashtra

... Applicant
... Respondent

Mr. Amit Icham with Mr. Aniket Nikam, for Applicant.
Ms. Ranjana D. Humane, for Respondent-State.
PSI Anilkumar Bhosale, Dharavi Police Station present.

CORAM: N.J.JAMADAR, J.

DATE : 7 MARCH 2024

P.C.

1. Heard the learned Counsel for the parties.
2. The applicant who is arraigned in C.R.No.1317 of 2022 registered with Dharavi Police Station for the offences punishable under Sections 302, 324, 504, 506 read with Section 34 of the Indian Penal Code, seeks to be enlarged on bail.
3. On 28 November 2022, Durgesh (the deceased) had an altercation with the persons who were dancing while playing music on a loud speaker. The deceased asked them to switch off the music. The applicant questioned the authority of the deceased to ask them to switch off the music. A fight ensued. The applicant and co-accused Gangaram allegedly abused the deceased. The applicant allegedly took up a beer bottle which was lying at the spot and gave blow on the head of the deceased. Co-accused Gangaram picked up a stone and started to give blows by means of stone on

the face of the deceased. As the first informant raised alarm, his wife, and others came to his rescue and, thereupon, the applicant and co-accused fled away.

4. Inviting attention of the Court to the injury certificate issued by L.T.M.G. Hospital, Sion, which indicates that the deceased had sustained swelling on left side parietal region and friction abrasion on left side elbow and was discharged on 30 November 2022, learned Counsel for the Applicant submitted that initially a case of having caused hurt to the deceased by means of dangerous weapon only was registered. The deceased was subsequently admitted in KEM Hospital on 2 December 2022 and narrated history of accidental fall while working in an air-condition plant, leading to head injury and trauma to right upper limb. Learned Counsel for the Applicant submitted that the deceased was discharged from KEM Hospital on 7 October 2022 and the deceased eventually died on 11 December 2022. Thus, according to the learned Counsel for the applicant, homicidal nature of the death becomes suspect. Learned Counsel further submitted that, in any event, the applicant had given a single blow by means of bottle with no intention to cause death of the deceased.

5. In opposition to this, learned APP submitted that there are witnesses who stated that the deceased was assaulted by the applicant by means of a beer bottle and by the co-accused by means of stone. Final cause of death certificate indicates that the deceased died on account of the complications following injury due to hurt on

the head. In view of the evidence of the eye witnesses, a prima facie case is made out against the applicant and, therefore, he does not deserve to be released on bail.

6. I have perused the allegations in FIR, the statements of the witnesses who claimed to have witnessed the alleged incident of assault by the applicant by means of beer bottle. The injury certificate issued by the Sion Hospital indicates that on 28 October 2022, the deceased had narrated the history of assault by means of bottle by six unknown persons. Only two injuries were noted : swelling on left side parietal region and friction abrasion on left side elbow. It appears that the deceased was discharged on 30 November 2022. The injury certificate issued by KEM Hospital indicates that on 2 December 2022 the deceased was admitted in the said hospital with history of accidental fall while working in AC Plant on 28 November 2022 at 2.30 p.m. leading to the head injury and trauma to right upper limb.

7. It could be urged that when the deceased got himself admitted in the KEM Hospital, on 2 December 2022, a different history was narrated for a particular purpose. However, prima facie there is a discrepancy regarding the cause of head injury sustained by the first informant. Undoubtedly, the ocular account commands preference. Yet, at this stage, the fact remains that there are two versions regarding the cause of the injuries sustained by the deceased. The controversy can only be resolved by way of evidence at trial.

8. Even otherwise, it seems that the incident occurred at the spur of

moment. There was no pre-mediation. As an altercation ensued, the applicant had allegedly picked up a beer bottle which was lying at the spot. Evidently, the applicant was not initially armed with any weapon. In the circumstances, whether the act of single blow which allegedly caused the death of the deceased, would fall within the dragnet of Sections 302 or 304 of IPC would also be a matter for adjudication at the trial.

9. Investigation is complete for all intent and purpose. Chargesheet has been lodged. I am, therefore, inclined to exercise the discretion in favour of the applicant.

10. Hence, the following order :

ORDER

(i) The Application stands allowed.

(ii) The Applicant – Durgesh Babu Derbere be released on bail in C.R.No.1317 of 2022 registered with Dharavi Police Station on furnishing a PR bond in the sum of Rs.30,000/- and one or two sureties in the like amount to the satisfaction of the trial Court.

(iii) The applicant shall stay away from the jurisdiction of Dharavi Police Station till the conclusion of trial, except to mark his presence at Dharavi Police Station on first Monday of every alternate month between 11 am to 1 pm till the 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 disposed.

(N.J.JAMADAR, J.)