

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3742 OF 2023

SANTOSH
SUBHASH
KULKARNI

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Parshuram Bhikaji More ...Applicant

Versus

State of Maharashtra ...Respondent

Ms. Shifa Khan, i/b Abdul Wahab Khan, for the Applicant.
Mrs. Geeta Mulekar, APP for the State/Respondent.
API Gokul Bhoi, Khar Police Station, Mumbai, present.

CORAM: N. J. JAMADAR, J.
DATED: 2nd JANUARY, 2024

ORDER:-

1. Heard the learned Counsel for the applicant and the learned APP for the State.
2. The applicant is arraigned in CR No.524 of 2021, registered with Khar Police Station, Mumbai, for the offences punishable under Sections 302, 326 and 504 of the Indian Penal Code, 1860 ("the Penal Code").
3. On 25th June, 2021, while the applicant was driving an auto-rickshaw there was a minor accident involving a motorcyclist. An altercation had ensued between the applicant and the said motorcyclist. Mohammad Naseem Khan (the deceased), a taxi driver, tried to intervene in the quarrel between the applicant and the motorcyclist. In the meanwhile, the

motorcyclist left the said spot. Accusing the deceased of having facilitated the escape of the motorcyclist, the applicant raked up quarrel with the deceased. The applicant had allegedly taken out a batten from his auto-rickshaw and gave a blow on the head of the deceased. The latter fell down and lost consciousness. Eventually the deceased succumbed to the injuries.

4. The learned Counsel for the applicant submitted that the incident had occurred at the spur of the moment. There was no premeditation. The applicant has been in custody since 25th June, 2021. Investigation is complete for all intent and purpose. In the circumstances, the learned Counsel submitted, the applicant deserves to be released on bail.

5. The learned APP opposed the prayer for bail. Inviting the attention of the Court to the opinion as to the cause of death, the learned APP submitted that the applicant does not deserve the exercise of discretion.

6. The Medical Officer opined that the cause of death was head injury due to hard and blunt impact. There was an underscalp haematoma over Parieto-occipital region of size 18cm X 16cm X 0.8cm with corresponding subgaleal haemorrhage.

However, the autopsy surgeon did not find any external injury on the person of the deceased.

7. I have also perused the statements of the eye witnesses. The witnesses are in unison on the point that the deceased, amongst other, tried to interfere in the quarrel between the applicant and the motorcyclist, and, after the motorcyclist left the spot of accident, the applicant raked up quarrel with the deceased and gave a blow by means of a wooden batten on the head of the deceased. *Prima facie* it appears that the incident occurred at the spur of the moment and there was no premeditation. It does not appear that the applicant had given multiple blows by means of batten. *Ex facie* it appeared to be a case of a single blow. In the circumstances, whether the offence would fall within the ambit of Sections 302 or 304 of the Penal Code would be a matter for adjudication at the trial.

8. Investigation is complete. The applicant has been in custody since 25th June, 2021. It is unlikely that the trial can be concluded within a reasonable period. In the circumstances, I am persuaded to exercise the discretion in favour of the applicant.

9. Hence the following order:

: O R D E R :

- (i) Application stands allowed.
- (ii) The applicant be released on bail in CR No.524 of 2021, registered with Khar Police Station, Mumbai, on furnishing a PR Bond in the sum of Rs.30,000/- with one or two sureties in the like amount.
- (iii) The applicant shall attend Khar Police Station, Mumbai, on the first Monday of every alternate month in between 10.00 am. to 12.00 noon for the period of two years or till conclusion of the trial, whichever is earlier.
- (iv) The applicant shall not tamper with the prosecution evidence and give threat or inducement to the first informant, any of the prosecution witnesses or any person acquainted with the facts of the case.
- (v) The applicant shall regularly attend the proceedings before the jurisdictional Court.
- (vi) 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.

[N. J. JAMADAR, J.]