

AGK

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

BAIL APPLICATION NO.1272 OF 2023

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Raj Shailesh Valmiki

... Applicant

V/s.

The State of Maharashtra

... Respondent

Mr. Kuldeep Patil i/by Ms. Saili N. Dhuru for the applicant.

Mr. Amit A. Palkar, APP for the respondent/State.

CORAM : AMIT BORKAR, J.

DATED : JULY 20, 2023

PC.:

1. This is an application seeking bail under Section 439 of the Criminal Procedure Code, 1973 in connection with C.R. No.265 of 2022 registered with Kamothe Police Station for offences punishable under Sections 302 read with Section 34 of the Indian Penal Code, 1860.

2. The prosecution's case in brief is that informant Salman Khan runs a pan shop at plot No.9, Sector 14, Kamothe. The present applicant used to visit said shop. On 27 October 2022 at 11.00 a.m. present applicant and one Raj, co-accused were at the pan shop. That time they had quarrel with a person. Accused persons started assaulting the said person by kick and fist blows.

Informant came out of his shop and noticed that accused Raj stabbed knife in the back of the said person. Thereafter, present applicant and co-accused ran away.

3. The applicant was arrested on 28 October 2020. The Sessions Court rejected application filed by the applicant under Section 439 of the Criminal Procedure Code, 1973 by order dated 21 March 2023.

4. Learned advocate for the applicant submitted that there is material inconsistency between eye-witness and medical evidence. CCTV footage does not support the case of prosecution. Except informant, no witness has attributed role of assault by knife. The co-accused is released on bail. The applicant has no criminal antecedents to his discredit. Hence, the applicant is entitled to the relief under Section 439 of the Criminal Procedure Code, 1973.

5. Learned APP submitted that CCTV footage has not recorded actual incident of assault by knife. The informant's statement is clear which attributes specific role to the applicant. Inconsistency in the oral and medical evidence needs to be decided during trial. Considering the nature of assault, the applicant does not deserve to be released on bail.

6. On perusal of the charge-sheet and material on record, it prima facie appears that the informant has attributed role of assault by knife at the back of the deceased. However, post-mortem report indicates death by assault on the chest. The statements of witnesses do not indicate applicant carrying knife nor does CCTV panchanama placed on record indicate that the

applicant was carrying knife. Charges are yet to be framed. It is unlikely that the trial will be finished in near future. Moreover, the co-accused has been released on bail. The applicant has no criminal antecedents to his discredit.

7. On overall consideration of the material on record, the applicant has made out a case for relief under Section 439 of the Criminal Procedure Code, 1973. Hence, following order:

- a) The applicant be released on bail in connection with C.R. No.265 of 2022 registered with Kamothe Police Station for offences punishable under Sections 302 read with Section 34 of the Indian Penal Code, 1860 on furnishing P.R. Bond in the amount of Rs.25,000/- with one or two sureties in the like amount;
- b) The applicant shall mark his presence before the concerned police station on first Saturday of each month till conclusion of the trial;
- c) The applicant shall remain present before the Trial Court on each and every date unless specifically exempted by the Court;
- d) The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court;
- e) The applicant shall, at the time of execution of the bond, furnish his address and mobile number to the

investigating officer, and the court concerned, and shall not change the residence till the final disposal of the case;

8. The bail application stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)

Note: This order is modified as per order dated 3 August 2023 to substitute paragraph 7(a).