

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 1778 OF 2024
WITH
CRIMINAL APPLICATION NO.4338 OF 2024

Vaibhav Vishnu Funde

VERSUS

The State Of Maharashtra

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Advocate for Applicant : Mr. Narwade Narayan B.

APP for Respondent/State : Mr. A.S. Shinde

Advocate for Complainant/Victim : Mr. Sandip R. Andhale

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CORAM : S.G. MEHARE, J.

DATED : OCTOBER 16, 2024

PER COURT:-

1. Heard learned counsel for the applicant, learned APP for the State and particularly learned counsel for the victim at length.
2. The applicant seeks bail in Crime No.948 of 2024 registered with Rahuri Police Station, District Ahmednagar for the offences punishable under Sections 105, 118(1), 115(2), 352, 351(2), 351(3), 3(5) of the Bharatiya Nyaya Sanhita, 2023.
3. Both parties were fighting since long. The police constable at Rahuri had illicit relationship with the mother of the present applicant. The deceased was retired policemen. On the report of this applicant, the offence of attempt to murder was registered against the deceased.

4. The prosecution has a case that on the day of the incident, the deceased had been to Ahmednagar to attend the trial. When he was going to Sangamner for his heart treatment, in the midway, there was Shanishingnapur Phata. He was sitting in cane juice center. The applicant and his mother reached there. They started beating the deceased with helmet on his legs. The applicant was recording the incident in his phone. They were uttering that the deceased had teased the applicant's mother. The entire incident was recorded in the mobile handset of the applicant. They were making allegations against each other. The deceased was calling the mother of the applicant as prostitute and saying that she has blackmailed him for last 15 years and extracted a huge money. The deceased was saying that he has been suffering from heart disease, so leave him. However, in the fit of quarrel, he fell down. The mother of the applicant asked the applicant to call the ambulance. The applicant called the ambulance. People put him into the ambulance. As per the FIR, the applicant himself admitted the deceased to Rahuri Hospital. He has died of heart attack.

5. Learned counsel for the applicant would submit that the deceased was troubling the applicant and his mother. He was consistently following them. The deceased was intending to eliminate the applicant and his mother. He had lodged many reports against the deceased. After the crime for attempt to murder was registered

against him, the deceased was harassing them. Learned counsel for the applicant argued that the video was deliberately recorded to point out that the deceased teased the mother of the applicant and to create the evidence against him. Had it been their intention to kill him, he would not have recorded the said incident in his own mobile handset. He would submit that on the day of the incident, there was a weekly market at Shanishingnapur. Hence, the applicant and his mother were there. The deceased knew it was a weekly market day. Hence, he went there deliberately. Otherwise he had no reason to stay near the Phata. The deceased had teased the mother of the applicant. Hence, they became aggressive and assaulted him. The applicant never gave a blow to the deceased on his chest knowing well he was suffering from heart disease. He was not beaten on his chest. Therefore, it cannot be said that the offence under Section 105 of the Bharatiya Nyaya Sanhita is made out. He has referred to the report lodged by the applicant to the police authorities and N.C.'s registered against the deceased. He would argue that since he was troubling the applicant and his mother consistently, an application for cancellation of his bail is also filed and it is pending. He would submit that the post incident conduct of the applicant is material. He himself admitted the deceased to the hospital. His conduct shows that he never had an intention to kill the deceased. He was just protecting him from the acts of the deceased. He would submit that the

applicant is languishing in jail since August 2024. The material investigation has been completed. There are no antecedents to his discredit. It was the deceased who created the situation. He did not improve and stopped stalking his mother. No weapon is used in the crime. Hence, he may be granted bail.

6. Learned counsel for the victim has vehemently argued that there are many eyewitnesses to the incident. The N.C.'s were filed against the deceased with a view to create the material for cancelling the bail. He admitted that an FIR was registered against the deceased on the report of the applicant. His bail conditions were relaxed. The applicant was suffering from heart disease. On reading the transcription from the video recording, he has vehemently argued that the deceased was repeatedly saying the applicant that he should not trouble him. He is suffering from the heart disease. However, the applicant was aggressive. He also argued that the words used by the applicant and his mother shows that they were not listening the deceased and going on beating him. He was 68 years old. He also read the material from the charge sheet with the help of the learned APP and argued that no incident of teasing at petrol pump happened. He also argued that the applicant had deliberately beat the deceased as they wanted to teach him a lesson. They were consistently harassing the deceased. The mother of the applicant caught hold his collar and fell him down. The applicant and his mother were

knowing well that he may die, if he is harassed and beaten. Their acts were intentional. The offence is serious. The investigation is in progress. Hence, he may not be granted bail.

7. Learned APP read over Illustration (b) of Section 101 of the Bharatiya Nyaya Sanhita, 2023. The illustration speaks about that a person knowing that another is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury and another person dies in consequence of the blow, in such circumstances, the person giving blow is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health.

8. Perused the papers. A quarrels between the applicant and the deceased had a checkered history. The deceased was facing the criminal trial for attempt to murder. Though it has been argued that the applicant and his mother were also present in that trial before Ahmednagar Court, at this juncture, there is no material. However, the fact remains that the incident happened. The applicant and his mother were beating the deceased. The deceased was saying that he is not well, even then the applicant was beating him. On reading the Illustration (b) of Section 101 of the Bharatiya Nyaya Sanhita, 2023, the prosecution should have case that the applicant gave a blow deliberately on his chest. The deceased fell down during

the quarrel. The post incident conduct of the applicant has some relevance. Though they were angrily beating the deceased, they were conscious with the fact of falling of the deceased down and they were calling the police as well as the ambulance. On the call of the applicant, the ambulance came and the applicant and his mother admitted the deceased to the hospital. They themselves intimated the police about the incident. This post incident conduct mitigates the crime. Admittedly, the deceased did not die of the injuries caused to him. He has died of Coronary Artery disease. The cause of death is not direct effect of the assault at the hands of the applicant. In the fit of anger, both were abusing each other and loudly quarelling. The investigation papers placed before the Court shows that the material investigation against the applicant has been completed. There are no antecedents to his discredit. He is a young boy of 24 years. Nothing is to be recovered from him. Hence, he deserve bail. Hence, the following order :

ORDER

- (i) Bail Application is allowed.
- (ii) Applicant, Vaibhav Vishnu Funde, be released on bail on furnishing P.B. and S.B. of Rs.50,000/- (Rupees Fifty Thousand only) with one solvent surety of the like amount in the above crime, on the conditions that ;

(7)

- (a) The applicant should not tamper with the prosecution witnesses.
- (b) The applicant should attend the police station as and when called on written notice by the investigation officer till filing the charge sheet.
- (iii) Criminal Application No.4338 of 2024 stands disposed of.

(S.G. MEHARE, J.)