

Sayali Upasani

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

BAIL APPLICATION NO.- 251 OF 2024

Surendra Chandrakant Patil

... Applicant

Vs.

The State of Maharashtra

...Respondent

Mr. A. S. Khandeparkar, Senior Advocate with Mr. Rohit P. Mahadik with Rushikesh B., Apoorva C., Vaibhav Kulkarni, Farhan Shaikh, P. Sharma, Saurabh Mittal i/b Khandeparkar and Associates, for Applicant.

Mr. R. M. Pethe, APP for State/Respondent.

Mr. Amol Sudam Khonde, API, Khadakpada Police Station, Present.

CORAM:- N. J. JAMADAR, J.

DATED:- 29th APRIL, 2024.

PC:-

- 1) Heard the learned Counsel for the parties.
- 2) The applicant, who is arraigned in CR No. 273 of 2020, registered with Khadakpada Police Station, for the offences punishable under Sections 302 read with Section 34 of the Indian Penal Code, 1860 and Section 3 of the Maharashtra Prevention and Eradication of Human

Sacrifice, other Inhuman and Aghori Practices and Black Magic Act, 2013, has preferred this application to enlarge him on bail.

3) Pandharinath Tare, the deceased, was the maternal uncle of Devendra Bhoir, the first informant. Pandharinath Tare was residing with Chandubai Tare, his mother, Shivram Tare, the father and Reshma Tare, the wife and Dipesh Tare (A1), the son. Sangita Tare, the wife Kailas, brother of Pandharinath was also residing with them along with Vinayak Tare (A2) and Kavita Tare (A3), her children. Kavita (A3) was suffering from ailments. Sangita thought that Kavita was possessed by some spirit. Kavita was taken to the applicant, who was a priest and professed to treat persons suffering from ailments by chanting Mantras.

4) The prosecution alleges that the applicant had told the family members that Pandharinath and Chandubai were also possessed by the spirits and until they were disabused of the said influence, the family would suffer. On 25th July, 2020, Dipesh (A1), the son of Pandharinath, Vinayak (A2), and Kavita (A3), the children of Kailas, the brother of Pandharinath assaulted the deceased Pandharinath and Chandubai considering them to be possessed of the spirit. When the applicant went to the house of the deceased, the co-accused Vinayak and Kavita asked the applicant to bring them back to life as they had assaulted the deceased with a view to free them from the influence of the evil spirit.

5) The applicant came to be arrested on 26th July, 2020. The first application preferred by the applicant, was withdrawn on 26th October, 2021. The applicant was granted liberty to apply for bail afresh if the charge was not framed within one year from the date of communication of the said order.

6) Mr. Khandeparkar, the learned Senior Counsel for the applicant, submitted that there has been no progress in the trial and charge has yet not been framed.

7) Mr. Pethe, the learned APP, on instructions, submits that charge has yet not been framed and co-accused – Kavita has been enlarged on bail as she was allegedly suffering from mental ailments.

8) It is true that since the first application was withdrawn by the applicant as the Court expressed its disinclination to entertain the prayer for bail, the scope of consideration in the second bail application gets constricted, yet, the following factors bear upon the entitlement of the applicant for bail. Firstly, the applicant was not present at the time of the alleged occurrence. The indictment against the applicant is that of instigating the co-accused to assault the deceased with a view to free them from the evil spirit. Thirdly, the material on record indicates that Kavita has been released on bail as she appeared to be of an unsound mind. The release of Kavita bears upon the guilt of the applicant as the

question of unsoundness of mind of the co-accused at the time they assaulted the deceased, would be a matter for adjudication at the trial.

9) Even otherwise from the perusal of the statements of the witnesses, it prima facie appears that the applicant appeared to be stunned after noting as to what was done by the co-accused to the deceased. The question as to whether the applicant had, in fact, instigated the co-accused to cause the death of the deceased with an assurance that he would bring them back to life, would be a matter for adjudication at the trial. The applicant has been in custody since 26th July, 2020. Charge has yet not been framed.

10) In the backdrop of the nature of the accusation and the fact that one of the accused is suffering from mental ailments, it is unlikely that the trial would conclude within a reasonable period. Thus, having regard to the nature of the accusation and material against the applicant, at this stage, further detention of the applicant does not seem warranted.

11) I am, therefore, persuaded to exercise discretion in favour of the applicant.

12) Hence, the following order.

: ORDER :

(i) The application stands allowed.

(ii) The applicant be released on bail in CR No. 273 of 2020,

registered with Khadakpada Police Station, for the offences punishable under Sections 302 read with Section 34 of the Indian Penal Code, 1860 and Section 3 of the Maharashtra Prevention and Eradication of Human Sacrifice, other Inhuman and Aghori Practices and Black Magic Act, 2013, on furnishing a P.R. Bond in the sum of Rs.30,000/- with one or two sureties in the like amount, to the satisfaction of the learned trial Court.

(iii) The applicant shall mark his presence at Khadakpada Police Station, on the first Monday of every month between 10.00 am to 12.00 noon for a period of two years or till conclusion of trial, whichever is earlier.

(iv) The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to the first informant and any of the persons acquainted with the facts of the case.

(v) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of 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.]