

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

BAIL APPLICATION NO. 318 OF 2023

Suraj Changur Rajbhar

... Applicant

Vs.

State of Maharashtra

...Respondent

Mr. K. M. Tripathi, for Applicant.

Mr. S. R. Agarkar, APP for State.

Mr. Kiran Dhanawade, PSI, Navghar Police Station, Present.

CORAM:- N. J. JAMADAR, J.

DATED:- 3rd JANUARY, 2024

PC:-

1) Heard the learned Counsel for the applicant and the learned APP for the State.

2) The applicant, who is arraigned in CR No. 432 of 2022, registered with Navghar Police Station, for the offences punishable under Sections 302, 323, 504 and 506 read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code"), has preferred this application to enlarge him on bail.

3) The first informant runs a Canteen at United Rubber Industries, 1st Floor, Jai Velanki Industrial Estate, Mira-Bhayander (E). There were four workers in the said Canteen, who served tea and snacks to the workers in United Rubber Industries. On 6th June, 2022, there was an altercation between two of the canteen boys Ramzan Ali and Sajjad Ali (the deceased), on the one side, and accused No. 1- Upendra Chauhan, on the other side. Accused No. 1 – Upendra had allegedly abused and threatened Ramzan. The conduct of accused No. 1 was reported to Mr. Vikas Gupta, the Supervisor. Sajjad reported the said incident to Mohammad Tahir Mohammad Hasimuddin Alam, the first informant.

4) At about 11.15 pm when the first informant came near the gate of the factory, he found that deceased - Sajjad, witness - Ramzan, accused No. 1 - Upendra and the applicant - Suraj were involved in an altercation. A scuffle had ensued. The first informant tried to resolve the quarrel. Accused No. 1- Upendra whipped out a knife and charged on the person of the first informant. He ran away from the said place. Accused No. 1 – Upendra, however, assaulted the deceased – Sajjad by means of a

knife. Blows were unleashed on the stomach and ribs of the deceased, who eventually succumbed to the injuries.

5) The learned Counsel of the applicant submitted that the role attributed to the applicant is that of assaulting the deceased and Ramzan by means of fists blows only. Applicant was not armed with any weapon. Nor the applicant was involved in the first incident of alleged insult and assault by accused No. 1.- Upendra. In the circumstances, the applicant cannot be attributed with the common intention to cause the death of the deceased.

6) The learned APP opposed the prayer for bail. It was submitted that the presence of the applicant is made out by the statements of the first informant as well as witness Ramzan. Therefore, it cannot be said that the applicant did not share the common intention.

7) I have perused the statements of the first informant and witness Ramzan. The witnesses are, prima facie, in unison on the point that a fight had ensued between Sajjad and Ramzan, on the one side, and the accused No. 1 - Upendra and the applicant, on the other side. The applicant had allegedly assaulted the deceased and Ramzan by means of fist blows.

8) It is pertinent to note that the applicant was not involved in the first occurrence. Nor the applicant has used any weapon. Prima facie, it appears that the accused No. 1 -Upendra was armed with a weapon and during the course of the scuffle co-accused Upendra whipped out the knife and assaulted the deceased. In the circumstances, the aspect as to whether the applicant shared the common intention to cause the death of the deceased Sajjad, is a matter for adjudication at the trial.

9) In this view of the matter, I am persuaded to hold that a prima facie case is made out to exercise of discretion in favour of the applicant. Investigation is complete and charge-sheet has been lodged. The applicant appears to have roots in society. Possibility of fleeing away from justice and tampering with evidence appears to be remote. It may, therefore, be expedient to release the applicant on bail.

10) Hence, the following order.

: O R D E R :

(i) The application stands allowed.

(ii) The applicant Suraj Changur Rajbhar be released on bail in CR No. 432 of 2022, registered with Navghar Police Station, for the offences punishable under

Sections 302, 323, 504 and 506 read with Section 34 of the Indian Penal Code, 1860, 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 Sessions Judge.

(iii) The applicant shall mark his presence at the concerned 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) The applicant shall furnish his permanent address and mobile phone number to the Investigating Officer and intimate the change therein to the Investigating Officer.

(vi) 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 observations made hereinabove.

[N. J. JAMADAR, J.]