

Shailaja

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

CRIMINAL BAIL APPLICATION NO.505 OF 2022

Dheeraj Chattursingh Valmiki	]	Applicant
Vs.		
The State of Maharashtra	]	Respondent

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Ms. Anjali Awasthi a/w Mr. Aamir Khan, for Applicant.

Ms. Rashmi S. Tendulkar, A.P.P, for Respondent – State.

Ms. Asha Kadam, Pairavi officer, Trombay Police Station present.

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CORAM : PRITHVIRAJ K. CHAVAN, J.

DATE : 2nd MAY, 2024.

P.C.

1. This is an application for bail under Section 439 of the Code of Criminal Procedure, 1973 (for short “Cr. P.C”).

2. The applicant has been arrested by Trombay Police Station, Mumbai in connection with First Information Report (for short “F.I.R”) bearing No.292 of 2021 for the alleged offences punishable under Sections 326, 323 and 504 of the Indian Penal Code (for short “I.P.C”) for having caused grievous hurt to the deceased Rahul

Babubhai Paniket on the fateful day of 29th June, 2021 at B.A.R.C Trombay, Mumbai.

3. The prosecution story goes like this.

4. Rahul Paniker (for short “deceased”) had left his house on 29th June, 2021 around 7.00 a.m for his work at BARC. When he was standing in the queue to enter through the gate of the BARC, the applicant who was behind him dragged his collar and pushed him aside by abusing him in vulgar language. The applicant thereafter started assaulting the deceased by kick and fist blows, had also used a *punch* (an iron fist used for assaulting). Due to the blows of the said *punch* on the neck of the deceased, he fell down. The workers took the deceased at *Shatabdi Hospital, Govandi*. He was examined by the Doctors. After giving first aid, he was referred to Sion Hospital.

5. During treatment, he was admitted in E Trauma ward of the said Hospital. X-Ray of his vertebral column was taken. It revealed fracture of his vertebral column. Unfortunately, the deceased died twenty eight days after the date of the incident.

6. Obviously, offence under Section 326 of the I.P.C came to converted into 302 of I.P.C. The applicant was arrested by the Investigating Officer. Dead body of the deceased was sent for autopsy. Statements of the witnesses were recorded under Section 164 of the Cr.P.C. After investigation and as a result of the investigation, a charge-sheet has been laid against the applicant in the Magistrate's Court.

7. Having failed in his first attempt to secure bail from the Additional Sessions Judge, Bombay on 27th January, 2022, the applicant approached this Court.

8. I heard Ms. Awasthi, learned Counsel for the applicant at length, so also Ms. Tendulkar, the learned A.P.P.

9. Ms. Awasthi would argue that the applicant had no intention or *mens rea* in eliminating the deceased for, in a heat of passion, the applicant inflicted a blow on the neck of the deceased which, according to the learned Counsel, was not the proximate cause of death. The Counsel would argue that since the applicant has been incarcerated ever since his arrest in the month of June, 2020,

chances of concluding the trial within a reasonable period are bleak and, therefore, prayed for his release. It is submitted that the applicant is married having three children.

10. Ms. Tendulkar, learned A.P.P strongly objected the application for bail who invites my attention to the F.I.R lodged by the victim himself wherein it is stated that the applicant had not only inflicted multiple blows of kick and fist but also inflicted blows of iron *punch* on the neck of the deceased which reflects his intention to kill him. She is at pains to argue that there was a fracture to the vertebral column of the deceased which also indicates gravity of the blow inflicted by the applicant on the vital part of the body of the deceased. The learned A.P.P has invited my attention to the autopsy report, more particularly, column No.17. As such, the learned A.P.P would argue that this is not a fit case for bail since the charge has already been framed and the trial has commenced.

11. A bare look at the F.I.R would reveal that the applicant had dragged the deceased from a queue while entering through the gate of the BARC and thereafter inflicted multiple blows. Investigating officer recorded statements of the witnesses under Section 161 of

the Cr. P.C. There are two statements recorded by the Metropolitan Magistrate, Mumbai under section 164 of the Cr. P.C. of the witnesses namely Kolanji Kalia Arundhiar and Pranit Yashwant Karande. It reveals from the statements recorded under section 164 of the Cr.P.C that there was exchange of abuses as well as verbal duel between the applicant and the deceased on account of who was ahead in the queue. The applicant enraged and, therefore, pulled the deceased and inflicted blows of the *punch* on his neck. *Prima facie*, it seems that due to provocation and the verbal altercation between the two, the incident in question had occurred. No doubt, the applicant had inflicted blows on the neck of the deceased, however, *prima facie*, it doesn't appeal to one's mind that he had *meas rea* to eliminate the deceased, for, there seems to be no motive. Apart from the said fact, prosecution has not recovered the weapon of the offence viz: *punch* nor it appears from the record that any attempt has been made to recover the said weapon alleged to have been used in the crime.

12. The most crucial document is the autopsy report *qua* the deceased which reveals probable cause of death as "Septicemia as a complication of injuries sustained (Unnatural)". If the cause of death

is “Septicemia as a complication of injuries sustained (unnatural)”, it would be difficult to construe, at this stage, that the proximate cause of death of the deceased was due to the blows alleged to have been inflicted on the vertebral column of the deceased. No doubt, Column No.17 of the autopsy report is always crucial as it gives surface wounds and injuries, their nature, position, dimensions (measured) etc. It reveals that there was healed surgical wound over back of neck midline length 9c.m, with upper end situated at 5cm from occipital protuberance, on opening would, sutures present over muscle layer. Column further reveals that on opening sutures, four screws with rods were present on each side laterally and posteriorly from C3-C6 cervical vertebrae suggestive of operative procedure on fractured vertebra. As such, even from the perusal of the autopsy report, it reveals about postmortem injuries, it cannot be construed as a proximate cause of death.

13. The most important aspect is that the deceased died after twenty eight days of the incident which also creates a doubt as to whether the applicant could be said to have committed murder of the deceased with full intention. Above all, medical report of the deceased also reveals that he was HIV positive.

14. The applicant is behind the bars ever since his arrest on 30th June, 2020. He has a family comprising of wife and three children which, according to the learned Counsel for the applicant, has no source of income. These are not the findings on merits and demerits of the case but only in respect of considering as to whether liberty of the applicant can be protected who has already undergone around four years of incarceration.

15. Having considered the aforesaid facts, I am persuaded to release the applicant on bail. Now, to the order.

: ORDER :

[a] The application is allowed.

[b] The applicant – Dheeraj Chattursingh Valmiki be released on executing a P.R bond in the sum of Rs. 15,000/- with one surety in the like amount in connection with C.R. No.292 of 2021 registered with Trombay Police Station, Mumbai for the offences punishable under Sections 302, 326, 323 and 504 of the Indian Penal Code.

[c] The applicant shall scrupulously attend the Trial Court on each date unless exempted.

[d] The applicant shall surrender his passport, if any, to the Investigating Officer.

[e] The applicant shall not leave the jurisdiction of the Trial Court until conclusion of the trial.

[f] The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with the evidence.

[g] The applicant shall furnish his cell number as well as residential address to the Investigating Officer and shall inform if there is any change in the Cell number or the residential address, forthwith.

[h] Needless to state that breach of any of the conditions will entitle the prosecution to pray for cancellation of bail.

16. The application stands disposed of.

17. At this stage, learned Counsel for the applicant prays for releasing the applicant on furnishing a cash security in the sum of Rs.15,000/-.

18. The applicant be released on furnishing cash security in the sum of Rs.15,000/- for a period of four weeks.

[PRITHVIRAJ K. CHAVAN, J.]