

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 677 OF 2024

SANTOSH
SUBHASH
KULKARNI

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1. Ishwar Nandu Naidu
2. Subhash @ Dadya Bharat Parkhe
Subhas @ Dadya Bharat Pharke ...Applicants
Versus
The State of Maharashtra ...Respondent

Mr. Prashant Pandey, a/w Ashok Dhanuka, Dinesh
Jadhwani, Irfan Unwala, i/b W3Legal LLP, for the
Applicants.

Mr. Tanveer Khan, APP for the Respondent/State.

CORAM: N. J. JAMADAR, J.
DATED: 23rd FEBRUARY, 2024

ORDER:-

1. Heard the learned Counsel for the parties.
2. The applicants, who are arraigned in in CR No.927 of 2021 registered with Dahisar Police Station, for the offences punishable under Sections 302, 323, 504, 143, 144, 147, 148 and 149 of the Indian Penal Code, 1860 ("the Penal Code") and Sections 37(1) read with Section 135 of the Maharashtra Police Act, 1951, have preferred this application to enlarge them on bail. On 25th July, 2021 the first informant was apprised that one Satish Bharadwaj (the deceased) was being assaulted by Subhash @ Dadya (A2), Govind (A1) and other 7 to 8 persons near a public toilet. The first informant rushed

to the said spot. The first informant noticed that applicant No.2 Subham (A2), applicant No.1 Iswar Naidu (A4), Govind (A1), Prasad @ Parshya (A3) and 3 to 4 other persons were abusing and assaulting the deceased. Applicant No.2 Subhash @ Dadya was allegedly armed with a bamboo stick. Applicant No.1 Ishwar Naidu had an umbrella. Parshya (A3) was armed with an iron rod. Despite the request of the first informant and other persons, who had gathered threat, not to beat the deceased, the applicant and co-accused allegedly continued to assault the deceased.

3. Co-accused Govind (A1) took out a knife and gave blows by means of knife on the person of the deceased. When the first informant and the other witnesses made an attempt to rescue the deceased, the applicant and co-accused manhandled them, and threatened them with dire consequences. Eventually, the deceased was shifted to Shatabdi Hospital, where he succumbed to the injuries.

4. The applicants came to be arrested on 25th July, 2021. During the course of investigation, applicant No.2 Subhash @ Dadya made a discovery leading to the recovery of an umbrella and iron rod. Post completion of investigation, charge-sheet came to be lodged. The learned Counsel for the

applicants submitted that the role attributed to the applicants is that of assault by means of an umbrella and stick. As per the version of the alleged eye witness, 7 to 8 persons assaulted the deceased. The role of assault, by means of a deadly weapon, on the vital part of the body of the deceased, had not been attributed to either of the applicants. In the circumstances, the applicants deserve to be enlarged on bail.

5. The learned APP resisted the prayer for bail. It was submitted that the applicants have been specifically named as the assailants by the first informant and the other witnesses. It was further submitted that the applicants and co-accused had killed the deceased in prosecution of the common object of the unlawful assembly and, therefore, the fact that the applicants had not allegedly used any deadly weapon is of no significance.

6. I have perused the FIR and the statements of the alleged eye witness. The role of assault by means of knife has been attributed to Govind (A1), whereas co-accused Parshya (A3) assaulted the deceased by means of an iron rod. It would be contextually relevant to note that the autopsy surgeon has opined that the deceased died on account of

haemorrhage and shock due to multiple stab injuries. In Column No.17 of the PM Report the autopsy surgeon has mentioned two stab injuries and one incised wound. In addition, four contusions were noted.

7. *Prima facie*, if the statements of the witnesses are considered in conjunction with PM Report, it becomes evident that the cause of death was stab injuries attributable to the assault by Govind (A1). From perusal of the statement of Rugvesh Bhalekar, who had accompanied the deceased to the scene of occurrence, it appears that the accused party was already present at the said place. The witness Rugvesh and the deceased went thereat on a motorcycle. Thereupon, an altercation ensued as the deceased went near the applicant and the co-accused. In the circumstances, whether the applicants also knew that the offence of murder would be committed in prosecution of the common object of the unlawful assembly, would be a matter for adjudication at the trial.

8. The applicants are in custody since 25th July, 2021. It is unlikely that the trial can be concluded within a reasonable period. Thus, having regard to the role attributed to the applicants and *prima facie* material to show that the

cause of death was the stab injuries, which is attributable to Govind (A1), I am persuaded to exercise discretion in favour of the applicants.

9. Hence the following order:

: O R D E R :

- (i) Application stands allowed.
- (ii) The applicants be released on bail in CR No.927 of 2021 registered with Dahisar Police Station, on furnishing a P.R. Bond of Rs. 30,000/- with one or more sureties in the like amount, each.
- (iii) The applicants shall mark their presence at Dahisar Police Station on the first Monday of every alternate month in between 10.00 am. to 12.00 noon for the period of two years.
- (iv) The applicants shall not enter the limits of Dahisar Police Station for the period of two year or till the conclusion of the trial, whichever is earlier, except for the purpose of marking their presence at the police station and attending the Court.
- (v) The applicants shall not tamper with the prosecution evidence. The applicants 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.

(vi) On being released on bail, the applicants shall furnish their contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.

(vii) The applicants shall regularly attend the proceedings before the jurisdictional Court.

(viii) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicants and the trial Court shall not be influenced by any of the observations made hereinabove.

Application stands disposed.

[N. J. JAMADAR, J.]