

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.760 OF 2024

Rohit Dayanand Barsing] .. Applicant

vs.

State of Maharashtra] .. Respondent

Mr.Premkumar R. Pandey a/w Pawan Pandey and Kajal Mishra for the Applicant.

Ms.Mahalaxmi Ganpati, APP for the State.

API Prashant Kharat, Naupada Police Station present.

PSI Manoj Kudmate, Chembur Police Station present.

CORAM : BHARATI DANGRE, J

DATE : 10th April, 2024.

P.C.

1] This is Second Application filed by the Applicant, seeking his release in connection with CR No.396/2020, registered with Chembur Police Station, where he is charged for committing offence punishable under Section 302, 396, 143, 144, 147, 148, 149, 450, 452, 324, 120-B.188 and 269 of the IPC read with Section 4, 25 of the Arms Act read with Section 37(1), 135 of the Maharashtra Police Act, and Section 3 of the Epidemic Diseases Act.

In the first round of the litigation on 16.03.2023, the Application was permitted to be withdrawn..

2] I have heard the learned counsel for the Applicant and the learned APP for the State,

With their able assistance, I have perused the charge-sheet filed in the subject CR and perusal of the same would reflect hatching of conspiracy by the accused persons including the present Applicant, which resulted into death of Utkarsh Dhumal and it is the case of the prosecution that the accused persons participated in the incident, some by actually assaulting and others by assisting them in the assault.

The statement of Harshvardhan Gauda, a key witness, recorded on 13.09.2020, has given the sequence of events, where there is reference to the quibble which had occurred on 02.09.2020, where he referred to the presence of the present Applicant alongwith Sunny Jagtap. The narration as regards the incident dated 03.09.2020 is in detail when Harshvardhan was called to Siddharth Colony and he referred to the presence of Nishant, Manish, Sunny and a person with specs. He was manhandled in the compound in presence of 5-6 other unknown persons and Sunny and the person wearing specs hit him with a beer bottle, which resulted in bleeding injury.

Thereafter, he was taken to Rajawadi Hospital and a cause was shown to the Doctor for treating, that he had a fall from the bike. He was administered preliminary treatment and when he was brought out, a car was found waiting for him. In the car, Harshvardhan specifically

state that, the present Applicant and Uttam Kadu alongwith two persons were sitting. Thereafter, he was taken to Siddharth Colony where he was assaulted.

He saw accused persons Gandya and Babbi armed with sword and Manish with knife. The plan was explained to him, for gaining an entry into the house of Aniket and Pratik or he was threatened that if he did not assure access into their house, he should be killed. He was made to sit on a bike and on another bike the present Applicant sat as a pillion rider.

Thereafter, on reaching Suswagatam Building No.3, near Buddha Vihar, he has narrated the incident in great detail by referring to the name of applicant and by clearly stating that six persons took the lift and went on 6th floor, where Utkarsh was assaulted.

Undisputedly, it is not Harshvardhan's case that the Applicant went on 6th floor and assaulted, but definitely he continued to keep a watch, by waiting on ground floor and even the CCTV footage of which the Panchanama is drawn and compiled in the charge sheet, corroborate his statement, as Dankya, the Applicant was one of the person, who was standing near the wall of the lift.

The statement of Sachin Dhasal who has identified this person is also recorded and compiled in the charge sheet.

3] The Applicant faces accusation with the aid of Section 120-B and Section 143, 147, 149 and considering the specific role attributed to him, it is similar to that of Sunny Jagtap, who was declined the relief in Bail Application No.2102/2022, on the ground that based on the statement of Harshvardhan, he was part of the conspiracy, which was hatched and for this purpose even Harshavardhan was assaulted.

4] The similar reasoning apply with equal force to the present Applicant, as according to Harshvardhan, he was the person who was present, when he was assaulted by beer bottle and taken to the hospital and put under threat that he shall help them in gaining entry in the house of deceased.

Accordingly, all the accused persons, including the present Applicant reached the Suswagatam Building No.3 and six of them gained an entry into the house and eliminated Utkarsh and thereafter they came down.

All the while, the Applicant's role in the crime is, he was present and guarding the the lift gate, which clearly reflect his participation in the entire episode and particularly when he is also charged for hatching the conspiracy and giving effect to it with the aid of Section 143 and 149 of the IPC.

5] In the wake of above, I am not inclined to release the Applicant on bail.

Bail Application is, therefore, rejected.

[BHARATI DANGRE, J]