

Sayali Upasani

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 2830 OF 2023

WITH

BAIL APPLICATION NO. 739 OF 2023

Vainkya @ Vinikesh Rama Ingle

...Applicant

Versus

The State of Maharashtra

...Respondent

None for Applicant in BA 2830/2023.

Mrs.G.P. Mulekar, APP for State –Respondent in BA 2830/2023.

Ms. Chandni Chawla i/b Khan Abdul Wahab, for Applicant.

Mrs.G.P. Mulekar, APP for State –Respondent in BA-739/2023.

Mr. Bhosle, API Mankhurd Police Station, Present.

CORAM:- N. J. JAMADAR, J.

DATED:- 7th FEBRUARY, 2024.

PC:-

BAIL APPLICATION NO. 2830 OF 2023

- 1) The learned Counsel for the applicant in Bail Application No. 739 of 2023 submits that the Bail Application No. 2830 of 2023 has already been withdrawn.
- 2) Perused the order dated 2nd February, 2024.
- 3) Bail Application No. 2830 of 2023 be removed from Board having already been disposed as withdrawn.

BAIL APPLICATION NO. 739 OF 2023

4) This application is preferred for bail in Sessions Case No. 441 of 2022, arising out of CR No. 3 of 2022, registered with Mankhurd Police Station, Mumbai, for the offences punishable under Sections, 302, 307, 326 and 323 read with Section 34 of the Indian Penal Code, 1860.

5) Kantesh, (the deceased) was the brother of the first informant. On 31st December, 2022, he did not return home till 10 pm. The first informant was informed that the deceased was lying near a public toilet at PMJP Colony, Mankhurd. The first informant and his friend went to the said spot. The deceased was lying thereat. There were grievous injuries on the head of the deceased. He was shifted to the Hospital. The Medical Officer declared him dead.

6) The first informant alleged that he was informed by Mr. Akash Ramdhiraj Maze, the friend of Megharaj Gangane, that on 31st December, 2021 at about 10.15 pm., the co-accused – Ravi @ Chikana and his unknown associate had assaulted the deceased by means of Bambu stick and fist and kick blows on account of previous quarrel.

7) The applicant came to be arrested on 16th January, 2022.

8) The learned Counsel for the applicant submitted that the applicant had filed the application for discharge before the Court of Session. As the application was rejected, the said order was carried in revision before this Court in Criminal Revision Application No. 250 of 2023. By an order dated 7th October, 2023, this Court had admitted the Revision Application and granted stay to the further proceedings before the Court of Session. This Court, inter alia, observed that, at this stage, there is hardly any admissible evidence against the applicant.

9) The prosecution proposes to bring home the charge to the applicant on the basis of the statement of the two witnesses namely Akash Ramdhiraj Maze and Komal Singh. Both witnesses have stated that the co-accused – Ravi had picked up a Bambu stick and assaulted the deceased. One unknown associate of the co-accused Ravi also gave fist and kick blows.

10) The prosecution also banks upon a memorandum of disclosure statement allegedly made by the co-accused in which the applicant is named as an associate. Since the memorandum of disclosure statement does not constitute a substantive piece of evidence qua a non-maker co-accused and this Court has already observed in the order dated 7th October, 2023 that the said statement does not distinctly relate to the discovery thereby

made, prima facie, there is no material to connect the applicant with the alleged offences.

11) The learned APP made an endeavour to resist the application on the ground that the Investigating Officer has recorded supplementary statements and proposes to file a supplementary charge-sheet.

12) Evidently, test identification parade has not been held. To what extent the supplementary statements would bolster up the prosecution would be debatable. Thus, since the proceedings in Sessions Case have been stayed qua the applicant, it may be expedient to enlarge the applicant on bail.

13) Hence , the following order.

ORDER

(i) The application stands allowed.

(ii) The applicant Vainkya @ Vinikesh Rama Ingle be released on bail in Sessions Case No. 441 of 2022, arising out of CR No. 3 of 2022, registered with Mankhurd Police Station, Mumbai, for the offences punishable under Sections, 302, 307, 326 and 323 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 trial Court.

(iii) The applicant shall mark his presence at the Mankhurd Police Station, Mumbai, on the alternate 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 not enter the limits of Mankhurd and Govandi police station, for a period of two years and except for attending the proceedings before the Court or the police station.

(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.]