

Sayali Upasani

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 803 OF 2024

Ajay Sanjay Nayar

...Applicant

Vs.

The State of Maharashtra

...Respondent

**SAYALI
DEEPAK
UPASANI**

Mr. Arun Rajput with Mr. Viral Mukte , for Applicant.

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

Mr. Kambli, PSI, Shahu Nagar Police Station, Present.

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SAYALI DEEPAK
UPASANI
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CORAM:- N. J. JAMADAR, J.

DATED:- 20th MARCH, 2024

PC:-

- 1) Heard the learned Counsel for the parties.
- 2) The applicant, who is arraigned in CR No. 161 of 2023, registered with Shahu Nagar Police Station, for the offences punishable under Sections 302, 307, 324, 323, 143, 147, 149 and 504 of the Indian Penal Code, 1860, has preferred this application to enlarge him on bail.
- 3) On the night intervening 15th and 16th May, 2023, Babalu (the deceased) allegedly stole a mobile phone by committing house breaking by night. On 16th May, 2023, the

deceased was apprehended by Elias. The co-accused Imtiyaz, Nada, Shivam, Chandra, Elias and others questioned the deceased as to why he had committed theft of the mobile phone and assaulted him by means of fist and kick blows. The first informant tried to reason with the co-accused, who were assaulting the deceased and requested them to take the deceased to the police station, if he had committed a crime, and not to beat him. However, the co-accused continued to unleash blows. On the morning of 17th May, 2023, the applicant again questioned the deceased as to why he had committed theft and allegedly assaulted the deceased by means of a cement block. The applicant had allegedly followed the deceased while he was taking rest below the bridge, and assaulted him by means of a stick. Eventually, the deceased was found by PSI Mr. Chintu Dighe at the Railway Yard in an unconscious state. The deceased was shifted to the hospital. He was declared dead.

4) The learned Counsel for the applicant submitted that the rest of the seven accused have been enlarged on bail. The role attributed to the applicant, according to the learned Counsel for the applicant, cannot be segregated from that of the co-accused. The statement of the Police Officer, indicates that he found the deceased in an unconscious state, near the railway yard. The PM

report records that the opinion as to the cause of death was reserved as there were multiple injuries on the person of the deceased. In the circumstances, the applicant deserves to be enlarged on bail.

5) In opposition to this, the learned APP submitted that there is material to show that on the next morning of the assault by mob, the applicant had assaulted the deceased by means of a cement block. Internal injuries which correspond with the external injuries caused by the applicant by means of the cement block were noted by the autopsy surgeon. There are statements of two witnesses, which show that the applicant had assaulted the deceased by means of a cement block. In addition, the applicant made a discovery leading to the recovery of the pieces of the cement block by which the applicant had assaulted the deceased. Therefore, the applicant does not deserve to be enlarged on bail.

6) I have carefully perused the material on record. Evidently, the deceased was assaulted on 16th May, 2023 by a mob. The external injuries noted by the Autopsy Surgeon in column No. 17 indicate that there were as many as 18 external injuries on the person of the deceased. The role attributed to the applicant is that of assault by means of a cement block on the morning of

17th May, 2023. Indeed in column No. 19, the Autopsy Surgeon noted that there was a sub-scalp hematoma over the left parieto-temporal area of size 6 cm x 4 cm. However, there was no fracture of the scalp. The Autopsy Surgeon reserved opinion awaiting report of analysis as there was evidence of multiple injuries.

7) At this juncture, there is evidence to indicate that on the previous night the deceased was assaulted by a number of persons and there were multiple external injuries on the person of the deceased. Thus, the question as to whether the cause of death is attributable to the injuries allegedly caused by the applicant exclusively, would be a matter to be adjudicated at the trial.

8) In the circumstances, it appears that the incident of assault occurred when the applicant questioned the deceased as to why he had committed theft. The aspect as to whether the assault by means of cement block was with intent to cause death would also be a matter for adjudication at the trial.

9) In these circumstances, I am inclined to hold that a prima facie case to exercise discretion in favour of the applicant is made out.

10) Hence, the following order.

: O R D E R :

- (i) The application stands allowed.
- (ii) The applicant Ajay Sanjay Nayar be released on bail in CR No. 161 of 2023, registered with Shahu Nagar Police Station, for the offences punishable under Sections 302, 307, 324, 323, 143, 147, 149 and 504 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 Shahu Nagar Police Station, on the first Monday of every month between 10.00 am to 12.00 noon for a period of three 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) 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 the observations made hereinabove.

[N. J. JAMADAR, J.]