

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

**BAIL APPLICATION NO.896 OF 2024**

Waseem Fakhruddin Shaikh @ Wasim Kata ...Applicant

vs.

The State of Maharashtra ...Respondent

Mr. Moinuddin Khan, for the Applicant.

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

Mr. Meher, PSI, V.B. Nagar police station.

**CORAM : N. J. JAMADAR, J.**

**DATE : MARCH 04, 2024**

**P.C.:**

1. Heard the learned counsel for the parties.
2. The applicant who is arraigned in C.R. No. 26 of 2023 registered with Vinoba Bhave Nagar police station for the offences punishable under section 302 of Indian Penal Code, 1860 and section 142 of Maharashtra Police Act, 1951 seeks to be enlarged on bail.
3. The applicant as well as the deceased were indulging in various offences. Initially they formed one group. Later on, it seems there was a rift. On 22<sup>nd</sup> February, 2023 at about 11.15 am, the deceased and his friends including Asif Nurani, the first informant, while they were sitting below SCLR bridge, Kurla noticed that the applicant was approaching towards them. The deceased asked the first informant to call the police as the applicant had entered the

limits of Kurla in breach of the externment order. The applicant allegedly fled way.

4. After a while, the deceased and the first informant went in search of the applicant. The deceased was armed with hockey stick. After noticing the deceased, the applicant tried to hide himself behind a pole. The deceased pulled the applicant out and started to assault him.

5. As a blow given by the deceased fell on the pole, the hockey stick broke. The deceased continued to beat the applicant by first and kick blows. The applicant allegedly took out a knife and gave a blow on the right bicep of the deceased. Thereafter, the deceased was shifted to KEM hospital. However, he succumbed to the injuries.

6. Mr. Khan, the learned counsel for the applicant, submitted that the narration in the FIR would indicate that, in fact, the deceased and the first informant had come in search of the applicant with a view to assault the applicant, and the deceased was the aggressor. It was further submitted before the medical officer, the deceased had narrated that two known persons had assaulted him. At any rate, according to learned counsel for the applicant, there was no intention to cause death.

7. The learned APP resisted the prayer for bail. It was submitted

that pursuant to the discovery made by the applicant, the knife with which the applicant had assaulted the deceased came to be recovered. Moreover, the applicant has antecedents which disentitle him to the relief of bail.

8. I have perused the report under section 173 of the Code of Criminal Procedure and the documents annexed with it.

9. The autopsy surgeon has noted that there was a stab wound over antero-medial aspect of lower half of left arm. The cause of the death was hemorrhagic shock due to rupture of brachial vessels due to stab injury over left arm (unnatural). Prima facie, the deceased had sustained only one stab injury.

10. The allegations in the FIR are required to be appraised in totality. It is prima facie evident that the deceased and the first informant had gone in search of the applicant. The deceased was armed with a hockey stick. The applicant had made an attempt to save himself by hiding behind the pole. The deceased had pulled the applicant and started assaulting him. A blow given by the deceased fell on the pole and the hockey stick broke. Even thereafter, the first informant states, the deceased continued to unleash fist and kick blows. The first informant asserts that the applicant implored the deceased not to assault him. Yet, the deceased continued to give blows. Thereupon, the applicant allegedly gave a blow by means of

knife on the bicep of the deceased.

11. In the backdrop of the aforesaid narration of the occurrence, the submission on behalf of the applicant that the deceased was the aggressor cannot said to be unfounded. In the circumstances of the case, the question as to whether the applicant exceeded the right of private defence may warrant adjudication. Since a single blow was given, purportedly with a view to save the applicant from the clutches of the deceased, the question as to whether the offence would fall within the dragnet of section 302 or 304 of the Penal Code would also warrant consideration. Thus, I am inclined to hold that a prima facie case for grant of bail is made out.

12. As regards the antecedents of the applicant, as noted above, the applicant and the deceased both were indulging in offences and there is material to indicate that a number of crimes were registered against the deceased as well. In the circumstances, I am inclined to exercise the discretion in favour of the applicant subject to stringent conditions.

Hence, the following order.

### **ORDER**

1] The application stands allowed.

2] The applicant be released on bail in C.R. No. 26 of 2023

registered with Vinoba Bhave Nagar police station, on furnishing a P.R. Bond of Rs. 30,000/- with one or more sureties in the like amount.

3] The applicant shall mark his presence before the Court of Session on the first Monday of alternate month between 11 am to 1 pm for a period of three years or till conclusion of the trial whichever is earlier.

4] Except for the purpose of attending proceeding before the Court, the applicant shall not enter the limits of Mumbai City, Mumbai suburban and Thane Districts for a period of three years or till the conclusion of the trial whichever is earlier.

5] The applicant shall not tamper with the prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses or any person acquainted with the facts of the case.

6] The applicant shall furnish his contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.

7] The applicant shall regularly attend the proceedings before the jurisdictional Court.

8] 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 applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

Application disposed.

**(N. J. JAMADAR, J.)**