

Sayali Upasani

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1227 OF 2024

Dinesh Rajdev Jaisawar

...Applicant

Vs.

The State of Maharashtra

...Respondent

**SAYALI
DEEPAK
UPASANI**

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Mr. Amol Mhatre with Sameer Mhatre, for Applicant.

Mr. Prashant Jadhav, APP for State-Respondent.

Lala B. Lonkar, PSI, Rabale MIDC Police Station, Present.

CORAM:- N. J. JAMADAR, J.

DATED:- 26th MARCH, 2024

PC:-

- 1) Heard the learned Counsel for the parties.
- 2) This application is preferred for bail in Sessions Case No. 644 of 2023, arising out of CR No. 337 of 2017, registered with Rabale MIDC Police Station for an offence punishable under Section 302 of the Indian Penal Code, 1860.
- 3) The applicant and Ashraf Ali @ Munna (the deceased) were working in M/s. Jasmira Engineering Pvt. Ltd, Rabale, MIDC. The deceased was working as a Driller. The applicant was working as a Turner. On 16th November, 2017, at about 6.40 pm., the first informant Rakeshpal Ramdular Pal, who also

works as a helper in the said company, came out of the company premises and noticed that the deceased was lying on the spot near the shed for parking the vehicles of the owner of the factory. The first informant had seen the applicant running away along with some weapon. When he went near the spot where the deceased was lying, he found that the deceased had sustained bleeding injuries. Deceased was shifted to the Hospital. However, he was declared dead.

4) During the course of investigation, it transpired that the applicant had assaulted the deceased by means of a wooden log. The applicant made a disclosure leading to the recovery of the wooden rod. CCTV footage indicated that the applicant was running away from the factory premises. Eventually, charge-sheet came to be lodged.

5) Charge was framed in the month of January, 2020. As there was no substantial progress in the trial, the applicant preferred an application for bail, inter alia, on the ground of long incarceration. By an order dated 29th February, 2024, the learned Additional Sessions Judge, Belapur rejected the application for bail.

6) The learned Counsel for the applicant submitted that the applicant has been in custody for 6 and half years. There has

been no progress in the trial. The prosecution proposes to examine 46 witnesses. It is extremely unlikely that the trial can be concluded within a reasonable period. Even otherwise, there is no direct evidence against the applicant. He has been implicated on the basis of the statements of the witnesses that they had seen the applicant running away from the factory premises. Therefore, the applicant deserves to be enlarged on bail.

7) Mr. Jadhav, the learned APP resisted the prayer for bail. It was submitted that the first witness has been examined by the prosecution and his cross-examination is underway. In the backdrop of the nature of the accusation and having regard to the fact that there are two witnesses to the occurrence, the applicant does not deserve to be enlarged on bail. It was submitted that there is also circumstantial evidence in the form of discovery leading to the recovery of the weapon of offence, which shows the complicity of the applicant.

8) I have perused the report under Section 173 of the Code of Criminal Procedure 1973 and the documents annexed with it. The first informant stated that he had seen the deceased lying in an injured condition and the applicant running away from the factory premises along with some weapon. Basantlal Gupta, the

alleged eye witness states that he had seen the applicant armed with a wooden rod standing near the deceased.

9) The PM report indicates that the deceased died on account of a head injury due to heavy, hard and blunt impact. The weapon, which was recovered pursuant to the discovery made by the applicant, appears to be a wooden baton having length of 21 inches and width of 2 inches.

10) In the aforesaid view of the matter, even if the prosecution case is taken at par, having regard to the nature of the injuries found on the person of the deceased and the weapon with which the injuries were allegedly caused, the question as to whether the offence would fall within the dragnet of Section 302 or Section 304 of the Penal Code, would be a matter for adjudication at the trial.

11) The applicant has been in custody since 6 and a half years. Charge was framed in the month of January, 2020. There has not been substantial progress in the trial. In the backdrop of the nature of the accusation and the number of witnesses, which the prosecution may be required to examine to bring home the charge to the applicant, it is extremely unlikely that the trial can be concluded within a reasonable period. An inordinately long period of incarceration as an under-trial prisoner infringes the

right to speedy trial, which is a facet of the fundamental right guaranteed under Article 21 of the Constitution of India. Therefore, I am persuaded to exercise discretion in favour of the applicant.

12) Hence, the following order.

: O R D E R :

- (i) The application stands allowed.
- (ii) The applicant be released on bail in CR No. 337 of 2017, registered with Rabale MIDC Police Station for an offence punishable under Section 302 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 Rabale MIDC 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.]