

Sayali Upasani

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 1430 OF 2024

Avinash Kishor Mane

...Applicant

Vs.

The State of Maharashtra

...Respondent

**SAYALI
DEEPAK
UPASANI**

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SAYALI DEEPAK
UPASANI

Date: 2024.04.16
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Mr. S. Khan, i/b Khan Abdul Wahab, for Applicant.

Ms. Supriya Kak, APP for State/Respondent

Mr. Kamble. PSI, Dadar Police Station, Present.

CORAM:- N. J. JAMADAR, J.

DATED:- 10th APRIL, 2024

PC:-

1) Heard the learned Counsel for the applicant and the learned APP for the State.

2) The applicant, who is arraigned in CR No. 885 of 2023, registered with Dadar Police Station, for an offence punishable under Section 304 read with Section 34 of the Indian Penal Code, 1860, has preferred this application to enlarge him on bail.

3) On 13th August, 2023, at about 9 pm, the wife of the applicant, a co-accused, was waiting on platform No. 1, Sion to board a local train. Dinesh Rathod (the deceased) caught hold of her hand. She started to beat him by means of an umbrella which she was carrying. The deceased apologised, yet the co-accused continued to beat him by means of umbrella. A crowd gathered. The applicant came thereat and charged the person of the deceased. As the applicant raised his hand, in the commotion that ensued, the deceased fell on the platform. The deceased tried to climb up the platform. However he was trapped between the platform and local train. The applicant and the co-accused tried to flee away. They were apprehended.

4) The PM report indicates that the deceased died on account of Hemorrhagic Shock with Pneumothorax following blunt trauma to the chest and abdomen. There were multiple external injuries on the person of the deceased as he was trapped between the platform and the local train.

5) The learned Counsel for the applicant submitted that prima facie an offence punishable under Section 304 of the Penal Code, 1860 cannot be said to have been made out. At any

rate, the applicant had no intention to cause the death of the deceased.

6) The learned APP resisted the prayer for bail. Attention of the Court was invited to the statement of Ajay Yadav, the alleged eye witness, and the panchanama of CCTV footage.

7) I have carefully perused the statement of Ajay Yadav and CCTV footage. It appears that the deceased accidentally caught hold of the hand of the co-accused. It seems the co-accused felt that the deceased intentionally attempted to outrage her modesty. Thus, the co-accused beat the deceased by means of an umbrella which she was carrying. Persons gathered. There was a commotion. The applicant allegedly charged on the person of the deceased and the latter fell on the railway track. Prima facie, it does not appear that the applicant intended to cause death of the deceased or knew that his act of slapping the deceased was likely to cause the death. At any rate, the offence may fall within the dragnet of Section 304, Part II of the Penal Code, 1860.

8) The investigation is complete. The applicant has been in custody since 16th August, 2023. Having regard to the nature of the occurrence, further detention of the applicant does not seem

warranted. The applicant appears to have roots in society. Possibility of fleeing away from justice also seems to be remote.

9) I am, therefore, impelled to exercise discretion in favour of the applicant.

10) Hence, the following order.

: O R D E R :

(i) The application stands allowed.

(ii) The applicant be released on bail in CR No. 885 of 2023, registered with Dadar Police Station, for an offence punishable under Section 304 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 Dadar Police Station on the first Monday of every alternate 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) 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.]