

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1476 OF 2024

Ali Husain Ali Hasan Khan @ Kaddu

...Applicant

vs.

The State of Maharashtra

...Respondent

VISHAL
SUBHASH
PAREKAR

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Mr. Bhaskar Sarwade a/w. Ms. Aishwarya Darwekar, for the Applicant.

Mr. R. M. Pethe, APP, for the Respondent/State.

Mr. Anilkumar Bhosale, PSI, Dharavi police station.

CORAM : N. J. JAMADAR, J.

DATE : APRIL 08, 2024

P.C.:

1. Heard the learned counsel for the applicant and the learned APP for the State.

2. The applicant, who is arraigned in C.R. No. 44 of 2023 registered with Dharavi police station for the offences punishable under sections 302, 324 and 504 read with 34 of Indian Penal Code, 1860, seeks to be enlarged on bail.

3. Mohd. Jahid (the deceased) was working as a security guard at H.B. Shivdasani Garden. On 15th January, 2023 there was an altercation between the deceased and the applicant and other boys who were playing badminton in the said garden. The applicant had lodged a report bearing C.R. No. 11 of 2023 for the offences punishable under sections 323, 324, 504 and 506 read with 34 of the Penal Code and section 37(1)(a) read with 135 of Maharashtra

Police Act. The deceased had also lodged a NC bearing No. 42 of 2023 for the offences punishable under sections 323 and 504 of the Penal Code, at Sion police station.

4. On 17th January, 2023 while the first informant and the deceased were passing from in front of Vijaynagar Building, 90 Ft. Road, Dharavi on their scooty, the applicant and the co-accused accosted them. They started to abuse the deceased. The co-accused lifted the scooty and due to jerk the first informant and the deceased fell down. Thereupon, the applicant gave a blow by means of sharp weapon on the chest of the deceased. When the first informant attempted to intervene, the applicant also assaulted her. She sustained injury on her hand. As people gathered, the applicant and the co-accused fled away. The deceased succumbed to the injuries.

5. Mr. Sarwade, the learned counsel for the applicant, submitted that it is a case of single blow. The intention of the applicant was not to cause death of the deceased. The applicant intended to only scare of the deceased. It was further submitted that there are discrepancies in the statements of the alleged eye witnesses to the occurrence. In the CCTV footage, the applicant is shown to be running away from the scene of occurrence and not assaulting the deceased. In the circumstances, the applicant being a young person,

he be enlarged on bail.

6. Mr. Pethe, the learned APP resisted the prayer for bail. It was submitted that the deceased was killed after premeditation as the quarrel had taken place between the applicant and the deceased on the previous day. Having regard to the nature of the injuries sustained by the deceased, which eventually proved fatal, the applicant does not deserve to be enlarged on bail.

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

8. The postmortem report indicates that there was a stab wound of 4 cm x 2 cm cavity deep on the right, above the right nipple. The injury penetrated middle lobe of lung cutting through and through. In addition there were three abrasions on the person of the deceased. The submission on behalf of the applicant that it was a case of single blow needs to be appreciated in the light of the fact that on the day of occurrence there was no provocation. The quarrel between the applicant and the deceased had occurred on 15th January, 2023.

9. Evidently, the applicant raked up a quarrel on the day of occurrence already armed with a deadly weapon. The element of premeditation is prima facie evident. There are eye witnesses who have stated about the assault perpetrated by the applicant after the

first informant and the deceased fell down as the co-accused had lifted the Scooty, they were riding. The eye witnesses have identified the deceased in the test identification parade. Moreover, the first informant claims that on 16th January, 2023 when she had visited the Sion police station, she had seen the applicant.

10. In the aforesaid view of the matter, there is a very strong prima facie case against the applicant. It is not an immutable rule of law that in a case of single blow, there can be no intention of causing death or such bodily injury as is sufficient in the ordinary course of nature to cause death,. I am, therefore, not inclined to exercise discretion in favour of the applicant.

Hence, the following order.

ORDER

1] The application stands rejected.

2] 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.

(N. J. JAMADAR, J.)