

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1603 OF 2023

SANTOSH
SUBHASH
KULKARNI

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Date: 2024.04.04
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Mohd. Salman Abdul Mukid Shaikh ...Applicant

Versus

The State of Maharashtra ...Respondent

Mr. Nilesh Navale, for the Applicant.

Ms. Ranjana Humane, APP for the State/Respondent.

CORAM: N. J. JAMADAR, J.

DATED: 2nd APRIL, 2024

ORDER:-

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

2. This is an application for bail in CR No.54 of 2022 registered with Nijampura Police Station, Thane, for the offences punishable under Sections 302 and 201 read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code").

3. Taslim Ansari (A2) was frequently contacting the wife of Arman Shah (the deceased). Thus, the deceased had a grudge against Taslim Ansari (A2). A meeting was held, in which the deceased had allegedly slapped Taslim Ansari (A2). At that time, Taslim (A2) had allegedly threatened the

deceased with dire consequences and stated that his family members would repent the said act of the deceased.

4. On 20th January, 2022, at the instance of Taslim (A2), the deceased was called in the factory of the applicant by Bilal @ Chandbabu (A3). An altercation ensued. Accused Nos.2 and 3 assaulted the deceased by means of fist and kick blows. Accused No.2 strangled the deceased. Accused No.2 also assaulted the deceased by means of an iron rod. After the deceased passed away, the accused with a view to destroy the evidence dumped the dead body of the deceased in a ditch near a bridge at Junadurgi, Kamba village,

5. On the next morning the applicant approached Shanti Nagar Police Station and apprised about the occurrence in his factory. The applicant and co-accused Taslim (A2) and Chandbabu (A3) were arrested. During the course of investigation, Taslim (A2) and Chandbabu (A3) made disclosure statements leading to recovery of the dead body of the deceased as well as the clothes, by means of which, the blood, which had fallen on the factory premises, was wiped out.

6. The learned Counsel for the applicant submitted that the applicant was in fact a witness to the occurrence. The

applicant had no role in the alleged assault. The applicant had himself approached Shanti Nagar Police Station and gave information about the occurrence. There is no material to connect the applicant with the alleged offences. At best, a charge under Section 201 of the Penal Code can be made out against the applicant. Since the applicant has been in custody for more than two years, the applicant deserves to be enlarged on bail.

7. The learned APP resisted the prayer for bail. Inviting the attention of the Court to the panchnama dated 21st January, 2022 and the panchnama of the CCTV footages which indicates that the applicant had accompanied the co-accused Taslim (A2) on the next day of the occurrence, the learned APP submitted that the applicant was also a privy to the alleged offences.

8. I have perused the report under Section 173 of the Code of the Criminal Procedure, 1973 ("the Code") and the documents annexed with it. *Prima facie* it appears that there were four persons at the time of the alleged occurrence in the factory of the applicant. In the said meeting, the deceased was allegedly killed. Evidently, apart from the accused there was no other eye witness to the alleged occurrence. The

prosecution case, especially qua the applicant, rests on the circumstantial evidence. The disclosure statements made by the co-accused, the CCTV footages and the statement of a witness in whose auto-rickshaw co-accused Taslim (A2) and Chandbabu (A3) had carried the dead body of the deceased constitute the circumstances which the prosecution presses into service.

9. In the disclosure statement of both Taslim (A2) and Chandbabu (A3), the applicant has not been named as the person, who was their accompanies. Taslim (A2) and Chandbabu (A3) have stated that they both assaulted the deceased in the factory premises of the applicant. The statement of Shaban Ansari also indicates that on the morning of 20th January, 2022 it was Taslim (A2) and Chandbabu (A3), who had borrowed his auto-rickshaw.

10. The only circumstance, which may have some incriminating tendency is the CCTV footages which show that on 21st January, 2022 at 8.28 am. the applicant and Taslim (A2) were found entering into the factory premises and at about 8.32 am. Taslim (A2) and the applicant went out on a scooter. The applicant was the pillion rider. They were carrying a white gunny bag.

11. In the backdrop of the aforesaid material, I find substance in the submission of the learned Counsel for the applicant that the material on record *prima facie* does not indicate that the applicant was one of the perpetrators of the assault. The circumstance that the applicant had reported the matter to police also deserves an adequate consideration. In the circumstances, whether the applicant also shared the common intention to kill the deceased would be a matter for adjudication at the trial.

12. The applicant has been in custody since January, 2022. The trial will take considerable time. Therefore, I am impelled to exercise discretion in favour of the applicant.

: O R D E R :

- (i) Application stands allowed.
- (ii) The applicant be released on bail in CR No.54 of 2022 registered with Nijampura Police Station, Thane, on furnishing a PR Bond in the sum of Rs.30,000/- with one or two sureties in the like amount.
- (iii) The applicant shall mark his presence at Nijampura Police Station on the first Monday of every alternate month between 10.00 am. to 12.00 noon for a period of three years or till the conclusion of the trial, whichever

is earlier.

- (iv) The applicant shall not tamper with the prosecution evidence. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any police officer.
- (v) On being released on bail, 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.
- (vi) The applicant shall regularly attend the proceedings before the jurisdictional Court.
- (vii) 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.]