

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1749 OF 2024

Abhirup Anil Thorat ...Applicant
vs.
The State of Maharashtra ...Respondent

Mr.Vinod Kashid, for the Applicant.
Ms. Gauri Rao, APP, for the Respondent/State.

CORAM : N. J. JAMADAR, J.
DATE : APRIL 23, 2024

P.C.:

1. Heard the learned counsel for the parties.
2. The applicant, who is arraigned in C.R. No. 237 of 2021 registered with Hill Line police station for the offences punishable under sections 120-B, 302, 201, 143, 144, 147, 148, 149 and 506(2) of Indian Penal Code, 1860 seeks to be enlarged on bail.
3. The indictment against the applicant and the co-accused runs as under:-

Sushant Bhaskar Gaikwad @ Gudya (the deceased) was a friend of Kunal Gaikwad, the first informant. There was animosity between the deceased and Akash Shinde @ Chintya (A1). On 17th September, 2021, the deceased, first informant and their friend Prakash Raibole had drinks at Premnagar Hill. At 2 pm they came in front of the meat stall of Makhansingh. The first informant went to fetch a cigarette. He heard cries of 'Guddya found'. The first

informant noticed that the Akash @ Chintya (A1), Amol More @ Vangya (A2), Yash Rupvate @ Monya (A3), the applicant (A4) and a child in conflict with law were coming towards the deceased armed with sword, scythe, knife and iron rod. They exhorted that the deceased should not be spared. After noticing them, the deceased tried to flee away. The first informant also ran towards Dena Bank Lane and therefrom witnessed the occurrence.

The accused Akash @ Chintya (A1), Amol More @ Vangya (A2), Yash Rupvate @ Monya (A3), the applicant (A4) and the child in conflict with law, allegedly assaulted the deceased by means of sword scythe, knife and iron rod. Prakash, the friend of the first informant also fled away in his auto rickshaw. After a few moments, the first informant saw Chintya (A1) and his associates running back towards Netaji Chowk. Thereafter, the first informant went to the place where accused assaulted the deceased. The latter was lying in a pool of blood. He had sustained grievous injuries. Police arrived. He was shifted to the Central Hospital, Ulhasnagar. While the first informant was on the way to hospital, a person called on the cellphone of the first informant and identified himself as 'Chintya' and threatened to eliminate the first informant as well. Eventually, the deceased succumbed to the injuries.

4. At the outset, Mr. Kashid, the learned counsel for the

applicant submitted that this Court has released co-accused Kaivalya Shikhre and Ganesh Gaikwad on bail by an order dated 15th April, 2024 in BA No. 2842 of 2023 and 1244 of 2023. The applicant is entitled to the same dispensation as the only distinction is that Kaivalya Shikhre was not named in the FIR. Whereas, the applicant was specifically named. The learned counsel for the applicant made an endeavour to urge that the co-accused Kaivalya was however named by Prakash Raibole, another eye witness and yet he was released on bail. Therefore, the applicant is entitled to claim parity with Kaivalya. It was further submitted that the external injuries noted by the autopsy surgeon would indicate that the deceased had sustained around 24 incised and stab wounds. The applicant was allegedly armed with an iron rod. Therefore, the role of the applicant appears to be distinct from other assailants specifically named by the first informant.

5. Since the application is pressed primarily on the ground of parity, it may be apposite to extract the observations in paragraphs 9 to 12 of the order dated 15th April, 2024. They read as under:-

9] As regards the applicant- Kaivalya, it is necessary to note that on the very day of occurrence, co-accused namely Akash @ Chintya (A1), Amol @ Vangya (A2), Yash Rupvate @ Monya (A3), alongwith the child in conflict with law, were apprehended. It does not appear that, at that point of time, the identity of the applicant as one of the assailants emerged. The applicant was named as one of the assailants in the supplementary statement of the first informant

recorded on 18th September, 2021. Undoubtedly, FIR is not an encyclopedia. However, in the case at hand, it appears, the first informant had opportunity to see the assailants at three stages. First, when the assailants came to Netaji Chowk armed with weapons and exhorted that they could find 'Gudya', the deceased. Second, the first informant claimed to have seen those assailants chasing and assaulting the deceased, who tried to flee away. Third, after perpetrating assault, the first informant claimed, the assailants ran back towards Netaji Chowk.

10] In this view of the matter, I find substance in the submission of Mr. Suryawanshi that the first informant had narrated the alleged occurrence in the FIR, in detail. Prima facie, the omission to name the applicant as one of the assailants cannot be said to be in consequential or immaterial.

11] In the supplementary statement, the first informant further stated that while he was on the way to hospital along with deceased, in addition a person who identified himself as Chintya, another person spoke with him and threatened to kill him. The prosecution alleges that the said second person was the applicant. This fact was also not stated in the FIR. Prima facie, the omission appears material.

12] The reliance on the transcript of the alleged conversation between the first informant, Akash @ Chintya (A1) and third person, to rope in the applicant as the said third person, appears to be a matter for evidence. To what extent the evidence of Prakash Raibole, whose statement came to be recorded on 5th October, 2021, when the applicant was already arrested on 26th September, 2021, would corroborate the version of the first informant would also be a matter for adjudication at the trial.

6. The aforesaid observations underscore the fact that the first informant claimed to have seen the assailants at three stages. At no point of time, the co-accused Kaivalya was named. Conversely, the applicant was named as one of the armed assailants at each stage.

Prima facie, the claim for parity is not sustainable.

7. The material on record indicates that the applicant was allegedly one of the persons who perpetrated assault on the deceased by means of deadly weapon, on a public street and in broad daylight. As many as 24 fatal injuries on the person of the deceased indicate the ferocity of the assault. Prima facie, a clear intent to cause the death of the deceased in prosecution of the common object of the unlawful assembly is evident.

8. I am, therefore, not inclined to exercise discretion in favour of the applicant.

Hence, the following order.

ORDER

1] The application stands dismissed.

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 co-accused the trial Court shall not be influenced by any of the observations made hereinabove.

(N. J. JAMADAR, J.)