

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1683 OF 2023

Santosh Balasaheb Shirke

...Applicant

vs.

The State of Maharashtra

...Respondent

Mr. Tapan Thatte a/w. Mr. Mohd Mulla and Mr. Zahir Mulla i/b. M.S. Mulla, for the Applicant.

Mrs. M.G. Patil, APP, for the Respondent/State.

Mr. Suryawanshi, API, Manpada police station.

CORAM : N. J. JAMADAR, J.

DATE : FEBRUARY 6, 2024

P.C.:

1. The applicant, who is arraigned in C.R. No. 463 of 2022 registered with Manpada police station for the offences punishable under sections 302, 460 and 411 read with 34 of Indian Penal Code, 1860 seeks to be enlarged on bail.

2. The indictment against the applicant and the co-accused is that on the night intervening 14th and 15th June, 2022 the accused in furtherance of common intention had committed house breaking by entering into premises of Vijay Paper Product, Plot No. 13A/17B, MIDC, Khambalpada Road, Dombivli (E). While the applicant and the co-accused were committing theft of the articles lying thereat, Gyanbahadur Gurum, the watchman of the building woke up and started raising alarm. Thereupon, Tony D'Silva, the accused No. 1, who was armed with an iron rod and Sunil Waghe, accused No. 4,

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who was armed with a stick, assaulted the deceased. Thereafter, Sunil Waghe, accused No. 4, divested the deceased of mobile phone and keys and opened the storeroom of the factory premises and committed theft of scrap worth Rs. 1,50,000/-.

3. Mr. Thatte, the learned counsel for the applicant, submitted that the prosecution case rests on the circumstantial evidence only . Qua the applicant, the only circumstance pressed into service is images captured by CCTV. Interestingly, the applicant is stated to be the person who had identified the persons snapped in the CCTV footages. The said statement is not admissible in evidence. It was further submitted that there is no material to show that the recording of time in the CCTV footages was 13 hours and 6 minutes behind, as claimed, in the panchanama of the transcript of the CCTV. In the absence of evidence to substantiate the said fact the presence of the applicant at the time of alleged occurrence in the factory premises cannot be said to have been established.

4. The learned APP resisted the prayer for bail. Inviting attention of the Court to the transcript of the CCTV footages and the memorandum of disclosure statement made by the co-accused, the learned APP submitted that the presence of the applicant at the scene of occurrence is firmly made out. As the offences were committed in furtherance of common intention, the applicant does

not deserve to be released on bail.

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

6. Two circumstances pressed into service against the applicant are: the CCTV footages which show the presence of the applicant at the factory premises along with co-accused and the discovery made by the co-accused Tony D'Silva. It would be contextually relevant to note that the prosecution has attributed the role of assault by means of iron rod and stick to co-accused Tony D'Silva (accused No. 1) and Sunil Waghe (accused No. 4). The prosecution does not allege that the applicant had assaulted the deceased.

7. I have perused the postmortem report. The cause of death was stated to be the shock due to cranio-cerebral injury. The injuries are attributable to the assault by means of hard and blunt object. During the disclosure statement of the co-accused, the role of assault upon the deceased seems to have been attributed to co-accused Tony D'Silva and Santosh Shirke.

8. Prima facie, it appears that the accused had entered into the factory premises with intent to commit theft. The co-accused Tony D'Silva picked up an iron rod to break open the glass door. As the deceased woke up and raised alarm, he was assaulted.

9. In the aforesaid circumstances, whether the applicant who

prima facie does not appear to be one of the assailants, also shared common intention to commit murder of the deceased would be a matter for adjudication at the trial.

10. The applicant is in custody since 16th June, 2022. Investigation is complete for all intent and purpose. Charge-sheet has been lodged. It is unlikely that the trial can be concluded within a reasonable period. I am, therefore, inclined to exercise the discretion in favour of the applicant.

Hence, the following order.

ORDER

- 1] The application stands allowed.
- 2] The applicant be released on bail in C.R. No.463 of 2022 registered with Manpada police station, on furnishing a P.R. Bond of Rs. 30,000/- with one or more sureties in the like amount.
- 3] The applicant shall mark his presence at Manpada police station on the first Monday of every alternate month in between 11 am to 1 pm for three years or till conclusion of the trial, whichever is earlier.
- 4] The applicant shall not tamper with the prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses or any person acquainted

with the facts of the case.

5] 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.

6] The applicant shall regularly attend the proceedings before the jurisdictional Court.

7] 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.)