

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

**INTERIM APPLICATION NO. 1993 OF 2023
IN
CRIMINAL APPEAL NO. 84 OF 2020**

Bhagirath Devu Kode	..Applicant
Versus	
State of Maharashtra	..Respondent

Dr. Yug Mohit Chaudhry for Applicant.

Ms. Pallavi N. Dabholkar, APP for State/Respondent.

**CORAM : SARANG V. KOTWAL &
SHIVKUMAR DIGE, JJ.**

DATE : 30 JANUARY 2024

P.C. :

1. The Applicant had earlier filed Interim Application No.270 of 2020 and Interim Application No.3448 of 2021 for his release on bail in Criminal Appeal No.84 of 2020. These applications were for bail pending final disposal of Criminal Appeal. Both these applications were sent through jail and those applications were preferred by both the accused in this case. On that occasion, on 15.03.2022, this Court had permitted the I.A.No.270 of 2020 to be withdrawn with liberty to file a fresh

application for bail if the Appeal was not decided within one year from 15.03.2022. While this order was passed, the I.A.No.3448 of 2021 was not disposed of. But it was disposed of subsequently on 05.01.2023 by another division bench of this Court by observing that no fresh grounds were made out and, therefore, prayer for bail was rejected. Thus, the present application is filed pursuant to the specific liberty granted to the applicant vide the order dated 15.03.2022. Since, after considering the arguments advanced for the applicant, a specific liberty was granted to prefer a fresh application for bail after one year from 15.03.2022, we have entertained this application and considered it on merits.

2. Heard Dr. Yug Chaudhry, learned counsel for the Applicant and Ms. Pallavi Dabholkar, learned APP for the State.

3. The incident occurred on 25.01.2016. The Applicant and his co-accused Ashok assaulted their cousin Prakash. He succumbed to his injuries on 01.02.2016. The F.I.R. was lodged by the father of the deceased.

4. Learned counsel for the applicant submitted that the

applicant is in custody since 26.01.2016. That means, more than 8 years have passed. The Appeal is not likely to be heard in a near future in the ordinary course. He further submitted that, from the facts of the case, it is clear that the offence may not be punishable U/s.302 of the I.P.C., but it could be a lesser offence. The deceased had died after about 6 days from the date of assault. There was only one fatal injury on the head that is attributed to co-accused Ashok. He, therefore, submitted that, on this background, the applicant deserves to be released on bail pending his Appeal. Learned counsel invited our attention to the evidence of two eye witnesses i.e. PW-3 and PW-4 and the medical evidence in the form of PW-9 and PW-10 to support his contentions.

5. Learned APP opposed these submissions. She submitted that the deceased was a handicapped person and, therefore, was helpless. The applicant and his co-accused had assaulted him with full intention and knowledge attracting the offence punishable U/s.302 of the I.P.C. She submitted that the postmortem notes show that there were multiple injuries on the dead body of the deceased which supports the case of the

prosecution.

6. We have considered these submissions. There are two eye witnesses in this case. PW-3 Sharad Kode is the brother of the deceased. He has stated that, their family had strained relationship with the accused because of a dispute relating to their land. He has described the incident and stated that, on the date of incident the applicant and the co-accused Ashok came to their house at 3.00p.m. They assaulted PW-3 himself, his sister and the deceased Prakash. The co-accused Ashok assaulted with an iron strip and the applicant was having a wooden stick. He has deposed that Ashok assaulted Prakash on his head with the iron strip and the applicant assaulted this witness with wooden stick on his head. The deceased Prakash was initially taken to Dongripada Government Hospital and then to Thane Civil Hospital. From there, he was taken to J.J. Hospital, where he breathed his last. After that, PW-3's father lodged the F.I.R.

7. PW-4 Dashrath Kode is father of the deceased. He has described the incident. He has stated that on 25.01.2016 at

3.00p.m. the incident took place. He has deposed that, Ashok assaulted Prakash on his head with an iron strip. He has deposed that the applicant assaulted Prakash on his back, hips and legs with a wooden log. According to the learned counsel for the applicant, this part attributing role to the applicant is an omission.

8. We have perused the F.I.R. In the F.I.R. there is a reference that, even the applicant had assaulted Prakash with wooden log on his head. His deposition and F.I.R. is consistent in mentioning that the co-accused Ashok had assaulted the deceased with an iron strip. In this background, the postmortem notes are important. It shows that, there was a sutured wound on the head. There were other abrasions on the face and other parts of the body. But, more importantly, the fatal injury was on the head. There was comminuted displaced fracture of the frontal bone. The cause of death was 'head injury associated with multiple injuries over the body'.

9. Strangely, PW-10, who had examined the deceased on 25.01.2016 had noticed only the head injury. In his cross-

examination, he has categorically stated that, he had not noticed any other injury on the body of the deceased. All these discrepancies will have to be considered at the stage of final hearing of the Appeal. However, one consistent fact emerges is that the fatal head injury was caused by the co-accused Ashok. Therefore, to that extent, considering the liberty granted to the applicant, he can be granted benefit at this stage. The applicant is in custody since 26.01.2016. He had played a lesser role. The question whether Section 34 of the I.P.C. will apply and whether he had shared common intention will have to be considered seriously at the final hearing stage. However, at this stage, considering that specific liberty was granted to him to prefer an application after one year from 15.03.2022, some leniency can be shown to the applicant. In these circumstances, the applicant can be granted bail during pendency of his appeal.

10. Hence, the following order :

ORDER

- i) During pendency and final disposal of Criminal Appeal No.84 of 2020, the applicant is directed to

be released on bail on his executing P. R. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.

ii) The Application is disposed of.

(SHIVKUMAR DIGE, J.)

(SARANG V. KOTWAL, J.)