

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2056 OF 2023

Zakir @ Wajid Hussain Salmani
Age 25 years, Occ: Self Employed,
Residing at Plot No.43, Near Geeta
Vikas High School, Road No.4,
Shivajinagar, Govandi, Mumbai.
(At present lodged in Mumbai
Central Prison, Arthur Road,
Mumbai).

... Applicant.

vs.

The State of Maharashtra
(Through the Shivajinagar Police
Station, Mumbai vide C.R. No.92 of 2020)

... Respondent.

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Mr Onkar Gawade, (appointed) Advocate for the Applicant.

Ms Shilpa Talhar, APP for Respondent/State.

Mr Dipak Kadbhane, PSI attached to Shivajinagar Police Station,
Govandi, Mumbai, present in the Court.

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Coram : R.N. Laddha, J.

Date : 25 April 2024

P.C. :

. Heard Mr Onkar Gawade, the learned Counsel for the

applicant, and Ms Shilpa Talhar, the learned Additional Public Prosecutor appearing for the respondent/State.

2. The applicant in the present case, is seeking bail in connection with CR No.92 of 2020, registered at Shivajinagar Police Station, Govandi, Mumbai. The charge against the applicant is under Section 302 of the Indian Penal Code ('IPC'). According to the prosecution, the applicant/accused struck the deceased on the head with a bamboo stick on 1 March 2020, resulting in the victim's death.

3. Mr Onkar Gawade, the learned Counsel for the applicant, submits that the investigation in this crime has been completed, and the charge sheet has been filed. He submits that, the applicant has been falsely implicated in the present crime based on the testimony of got-up witnesses. The applicant has been in jail since 2 March 2020. The alleged weapon, bamboo stick, was already recovered from the spot of the incident. Initially, the offence was registered under Section 307 of IPC, but after the victim's death, it was converted to Section 302 IPC. Many witness statements are stereotypical. The observations in the first bail order by the trial court were factually incorrect. The FIR indicates that the deceased initially assaulted the accused, and the complainant (who is brother of the deceased) claims that the deceased was a drug addict and had weak health. In the spot panchnama, no blood spots were shown at the site of the incident. Despite the charge

sheet being filed in May 2020, trial has not concluded. Further, the learned Counsel submits that there is no flight risk and the applicant/accused undertakes to face trial by attending the trial court regularly.

4. Ms Shilpa Talhar, the learned APP appearing for the State, submits that the offence is serious and punishable with death. Moreover, there exists direct evidence linking the applicant/accused to the crime, which was captured by the CCTV camera. The learned APP further states that the applicant had sought regular bail from the trial court on two separate occasions. The first bail application was rejected on 14 March 2023. Similarly, the trial court rejected the second bail application on 15 March 2024, citing the absence of any change in circumstances. Overall, there is *prima facie* material suggesting the applicant's involvement in the commission of the crime.

5. This Court has reviewed the copy of the charge sheet filed along with the accompanying documents. A perusal of the order passed by the learned trial court in the first bail application shows that the learned trial court, in denying the bail relied on statement of the witnesses, including Farooq Mehboob Shaikh, Amjad Mohammed Aslam Shaikh, Ibrahim Latif Khan, Naved Naushad Qureshi, Jaffer Aslam Shaikh, and Wasim Ibrahim Shaikh, concurred that the applicant had violently attacked the deceased with a bamboo stick.

6. Upon perusal of the statement of these witnesses it reveals that, except Jaffer Aslam Shaikh, other witnesses are not the eye witnesses to the incident. Their statements appear to be stereotypical. The complaint leading to the registration of the FIR demonstrates that the deceased initially assaulted the accused. The incident occurred on 1 March 2020, and the deceased passed away six days later. The applicant, who has no criminal antecedents, is only 25 years old. The material available on record *prima facie* suggests that the offence was committed without premeditation.

7. In the circumstances, this Court is inclined to grant bail to the applicant. Any concerns about potential witness influence on behalf of the State can be addressed by imposing appropriate conditions. Hence, the following order:

- (a) The applicant Zakir alias Wajid Hussain Salmani shall be released on bail in CR No.92 of 2020 registered at Shivajinagar Police Station, Govandi, Mumbai, on furnishing a PR Bond in the sum of Rs.25,000/- with one or two sureties in the like amount to the satisfaction of the trial court;
- (b) The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to any of the prosecution witnesses;

- (c) The applicant shall furnish the permanent address and contact details to the police inspector of the concerned police station and intimate the change, if any;
- (d) The applicant shall regularly attend the proceedings before the trial court;

8. Needless to say, violating any of the conditions above will make the applicant liable for cancellation of bail.

9. It is made clear that the observations made herein are *prima facie*, and the trial court shall decide the case on its own merits in accordance with the law uninfluenced by the observations made in this order.

10. All parties to act on the authenticated copy of this order.

11. Registry to communicate this order to the Superintendent, Mumbai Central Prison, Arthur Road Mumbai.

(R.N. LADDHA, J.)