



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1820 OF 2023**

Vikram Kimtilal Patwa

... Applicant

versus

The State of Maharashtra

... Respondent

Mr. Hare Krishna Mishra with Mr. Arun R. Gupta, for Applicant.

Mr. S.R.Aagarkar, APP for State.

Mr. Sunil Birhade, PSI Kalwa Police Station present.

CORAM: N.J.JAMADAR, J.

DATE : 9 JANUARY 2024

P.C.

1. Heard the learned Counsel for the parties.

2. This is an application for bail in connection with C.R.No.162 of 2022 registered with Kalwa Police Station for the offences punishable under Sections 302, 307, 323, 504 read with Section 34 of the Indian Penal Code and Sections 37(1) and 135 of the Mumbai Police Act.

3. On 20 May 2021, the first informant and his friends including Sunil (deceased) had an altercation with the applicant and co-accused Usman, who were accompanied by two girls. The first informant claimed that altercations ensued as the Sunil (deceased) advised accused and those girls to go home as it was getting late. In the scuffle that ensued, the co-accused Usman whipped out a knife and initially assaulted the first informant, who sustained injury on his hand. The applicant had

allegedly caught hold of Sunil. Co-accused Usman allegedly stabbed the deceased near the waist. As the deceased had sustained bleeding injuries, he was taken to Chhatrapati Shivaji Maharaj Hospital, where he was declared dead.

4. Learned Counsel for the Applicant submitted that there was no pre-meditation. The incident occurred at the time when the first informant, deceased and his friend, applicant and girls were having conversation. The role of assault is attributed to the applicant. In the circumstances, it cannot be said that the applicant also shared common intention to commit murder of the deceased or cause injury to the first informant.

5. Learned APP resisted the prayer for bail. It was submitted that, at this juncture, it would not be permissible to make a distinction between the complicity of the accused and co-accused. There is material to show that the applicant has caught hold of the deceased.

6. I have carefully perused the report under Section 173 of the Code of Criminal Procedure and the documents annexed with it. Evidently, the altercation occurred as the informant party questioned the presence of the accused and two girls at late night. Altercation resulted in fisticuffs. Co-accused who was allegedly armed with the knife unleashed blows. The statements of the two girls who accompanied the accused, prima facie, show that the members of the informant party had allegedly tried to push those girls. The context in which the occurrence took place, therefore,

deserves to be kept in view.

7. In any event, the applicant was unarmed. It is not the case that the applicant had assaulted either first informant or deceased. The question as to whether the applicant also shared common intention to commit murder of the deceased, in the circumstances of the case, would warrant adjudication at the trial. The applicant is in custody since 20 May 2021. There is a qualitative difference between the role attributed to the applicant and the co-accused Usman, the assailant. It is unlikely that the trial can be concluded within a reasonable period.

8. In the aforesaid view of the matter, I am impelled to exercise discretion in favour of the applicant.

9. Hence, the following order :

ORDER

(i) The Application stands allowed.

(ii) The Applicant - Vikram Kimtilal Patwa be released on bail in C.R.No.162 of 2021 registered with Kalwa Police Station, on furnishing a PR bond in the sum of Rs.30,000/- and one or two sureties in the like amount to the satisfaction of the learned Sessions Judge.

(iii) The Applicant shall stay away from the limits of Kalwa Police Station for a period of two years or till the framing of the charge, whichever is earlier.

(iv) The applicant shall mark his presence before the concerned police

station on every Monday of alternate month in between 11 am to 1 pm till framing of charge and, thereafter, shall abide by the directions issued by the trial Court.

(v) 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 alternate 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 hereinabove are confined to the consideration of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant.

Application disposed.

(N.J.JAMADAR, J.)