

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

BAIL APPLICATION NO. 1892 OF 2023

SANTOSH
SUBHASH
KULKARNI

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Naved Kamar Sharif Shaikh ...Applicant

Versus

The State of Maharashtra ...Respondent

Mr. Amin Solkar, a/w Gaurav Shenoy, i/b Amit Icham, for
the Applicant.

Mr. Bapu Holambe Patil, APP for the State/Respondent No.1.

Mr. Mateen Shaikh, a/w Arshad Shaikh and Muskan
Shaikh, for the Intervener.

CORAM: N. J. JAMADAR, J.

DATED: 13th MARCH, 2024

ORDER:-

1. Heard the learned Counsel for the applicant and the
learned APP for the State.

2. The applicant, who is arraigned in CR No.60 of 2022,
registered with Dharavi Police Station, Mumbai, for the offences
punishable under Sections 302, 307, 324, 323, 504 and 506 of
the Indian Penal Code, 1860 ("the Penal Code") and Section
37(1) read with Section 135 of the Maharashtra Police Act, 1951,
has preferred this application to enlarge him on bail.

3. Ibrahim, the first informant, Abdul Kadir (the deceased)
and the applicant are the residents of Naik Nagar, Dharavi. On

5th February, 2022 at about 11.00 am there was an altercation and fisticuffs between the applicant and the deceased. The applicant had threatened the deceased with dire consequences.

4. On 7th February, 2022 while the deceased and the first informant were standing in front of Cafe India, Mukund Nagar, Dharavi, the applicant allegedly came thereat and started to abuse and assault the deceased. The applicant whipped out a knife and gave blows on the stomach, neck and face of the deceased. When the first informant went to rescue the deceased, the applicant gave blows by means of knife on the right hand and face. The deceased was shifted to Sion Hospital. Eventually, the deceased succumbed to the injuries.

5. Mr. Solkar, the learned Counsel for the applicant, submitted that the first informant has suppressed the genesis of the occurrence. In fact, the first informant, deceased and their friends had kept a surveillance on the applicant and followed him to the scene of occurrence. Initially the deceased abused and assaulted the applicant. The first informant and others joined the deceased. In the melee that took place, the deceased sustained certain injuries. However, there is no clear evidence as to who assaulted the deceased and the first informant. In any event, according to Mr. Solkar, the incident occurred in the

spur of the moment. The applicant is young man of 28 years of age. He has been in custody since two years. Therefore, the applicant deserves to be enlarged on bail.

6. Per contra, Mr. Holambe Patil, the learned APP, submitted that there is overwhelming evidence to show that the applicant had perpetrated murderous assault upon the deceased and the first informant. Inviting the attention of the Court to the PM Report which categorically records that the deceased died on account of septicemic shock due to stab injuries to neck and abdomen, and the injury certificate of the first informant, it was submitted that a clear case of murder and attempt to commit murder has been made out against the applicant. Therefore, the applicant does not deserve to be enlarged on bail. The learned APP further submitted that the entire incident has been captured on CCTV footage which records the applicant *inter alia* unleashed blows by means of knife on the neck, stomach of the deceased, and the hands of the first informant, repetitively. The learned APP also placed reliance on the statement of the witnesses Ramjan Shaikh, Asif Shaikh and Siraj Ansari.

7. Mr. Solkar joined issue by canvassing a submission that the statements of the aforesaid witnesses were recorded belatedly. Mr. Solkar further submitted that the statement of

Siraj clearly indicates that the deceased had taken away the applicant to the side and, thereafter, started assaulting him. Siraj, Mr. Solkar urged, did not state that he had seen the applicant assaulting the deceased, though he claimed to have noticed that there was a bleeding injury on the neck of the deceased.

8. I have carefully perused the material on record and considered the submissions. There is substance in the submission of Mr. Solkar that the deceased and informant had followed and accosted the applicant, as is *prima facie* evident from the statement of Ramjan Shaikh. The statement of Siraj indicates that the deceased raked up quarrel and initially slapped the applicant. At the same time, there is overwhelming material to indicate that the applicant whipped out the knife and assaulted the deceased as well as the first informant. *Prima facie* the medical evidence lends credence to the version of the informant as well as the witnesses who have stated that the applicant assaulted the deceased and the first informant. The fact that Siraj did not state that he had seen the applicant armed with a knife, at this stage, does not detract materially from the prosecution version as in addition to the statement of the other witnesses, the images captured by the CCTV camera

prima facie show the complicity of the applicant. The transcript of the footages in the CCTV camera recorded in the panchnama dated 17th January, 2024, clearly indicates that the applicant was armed with a knife and gave blows on the neck and stomach of the deceased and also assaulted the first informant.

9. The submission on behalf of the applicant that the incident occurred in the spur of the moment may carry some substance. However, the nature of the occurrence deserves to be kept in view. It is not the case that either the deceased or the applicant was armed with any weapon. The deceased had slapped the applicant. Thereupon, it appears, the applicant whipped out the knife and gave blows on the vital parts of the body of the deceased. That *prima facie* reveals a clear intent to cause death or such bodily injury as was sufficient in the ordinary course of nature to cause the death.

10. In the aforesaid view of the matter, I am inclined to hold that a very strong *prima facie* case is made out against the applicant for the offences punishable under Sections 302 and 307 of the Penal Code. Thus, the applicant does not deserve to be enlarged on bail.

11. Hence, the following order:

: O R D E R:

- (i) Application stands rejected.
- (ii) 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.

In view of disposal of BA/1892/2023, IA/3384/2023 also stands disposed.

[N. J. JAMADAR, J.]