

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1910 OF 2023

SANTOSH
SUBHASH
KULKARNI

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Date: 2024.03.02
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Sunil Yadav Bhalerao

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Ajit Pitale, a/w Siddharth Pitale, for the Applicant.

Ms. Ranjana Humane, APP for the State/Respondent.

PSI K. V. Gosavi, Kalyan Police Station, present.

CORAM: N. J. JAMADAR, J.

DATED: 29th FEBRUARY, 2024

ORDER:-

1. Heard the learned Counsel for the parties.
2. This is an application for bail in CR No.388 of 2023 registered with Kalyan Railway Police Station for an offence punishable under Section 302 of the Indian Penal Code, 1860 ("the Penal Code").
3. Raviraj Deshmukh is the son of Vishwanath (the deceased). The first informant lodged a report asserting that on 2nd March, 2023 in between 14.12 pm. to 14.32 pm. while the deceased was returning to Titwala from Kalyan in the luggage compartment of the local train, the applicant allegedly assaulted the deceased by means of fist and kick blows and banging the head of the deceased on the floor of

the compartment as there was an altercation over the deceased having kicked the applicant. When the train reached Titwala Railway Station, the applicant was seen rushing out of the station in a hurry. The applicant was apprehended. There were bloodstains on the clothes and the sandel, which the applicant was wearing. The applicant came to be arrested. During the course of investigation, the applicant made discovery. On the basis of the images in the CCTV footages and the statements of the witnesses, the applicant has been arraigned for an offence punishable under Section 302 of the Penal Code.

4. The learned Counsel for the applicant submitted that the applicant has been roped in on the basis of suspicion only as he was allegedly trying to run out of the Titwala Railway Station. There is no eye witness to the alleged occurrence. Nor there is any other incriminating circumstance which unerringly points to the guilt of the applicant. In any event, according to the learned Counsel for the applicant, the applicant had given fist and kick blows and, therefore, it cannot be said that the applicant's intention was to cause death of the deceased.

5. In opposition to this, the learned APP submitted that the transcript of CCTV footages indicates that the applicant had boarded the luggage compartment of the local train at Kalyan Station. When the applicant was apprehended, there were bloodstains on the shirt, trouser and sandel of the applicant. The PM Report indicates that the deceased died on account of shock due to the cranio-cerebral injury. Thus, there is adequate material to show the complicity of the applicant.

6. I have perused the report under Section 173 of the Code of Criminal Procedure, 1973 and the documents annexed with it. *Prima facie*, the investigating officer could not locate and examine any eye witness to the occurrence. The prosecution presses into service two circumstances to establish the complicity of the applicant. First, in the CCTV footages the applicant was seen rushing out of the compartment. Secondly, when the applicant was apprehended, there were bloodstains on the clothes and sandel of the applicant.

7. The transcript of the CCTV footages indicates that the applicant had allegedly boarded the luggage compartment at Kalyan Railway Station at about 2.14 pm. It further appears

that at Shahad Railway Station, a number of passengers were seen alighting from the luggage compartment. Few passengers were standing in front of the luggage compartment to see what had transpired in the said compartment. This may imply that there were a number of passengers in the luggage compartment at the time of alleged occurrence.

8. In this view of the matter, can the identity of the applicant as the assailant be sustained on the strength of the circumstances arrayed against the applicant, namely, the bloodstains allegedly found on the clothes and sandal of the applicant and that the applicant was found running away, would be the question for determination at the trial. Evidently, the entire case rests on circumstantial evidence. The fact that the applicant was seen rushing away from the railway station may be compatible with the innocence as well.

9. In the light of the role attributed to the applicant i.e. assault by means of fist and kick blows only, the question as to whether the intention of the applicant was to cause death of the deceased or such bodily injury as was sufficient in the ordinary course of nature to cause the death, would also be a matter for adjudication at the trial.

10. Investigation is complete. Charge-sheet has been lodged. The applicant has been in custody for almost two years. I am, therefore, persuaded to exercise the discretion in favour of the applicant.

11. Hence the following order:

: O R D E R :

- (i) Application stands allowed.
- (ii) The applicant be released on bail in CR No.388 of 2023 registered with Kalyan Railway Police Station, on furnishing a P.R. Bond of Rs.30,000/- with one or more sureties in the like amount.
- (iii) The applicant shall mark his presence at Kalyan Railway Police Station on the first Monday of every alternate month in between 10.00 am. to 12.00 noon for the period of three years or till conclusion of the trial, whichever is earlier.
- (iv) 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 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 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 stands disposed.

[N. J. JAMADAR, J.]