

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1993 OF 2023

Prasad Shivanand Madnole ...Applicant

vs.

The State of Maharashtra ...Respondent

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PAREKAR

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Mr. Prashant Pandey a/w. Mr. Dinesh Jadhvani and Mr. Irfan Unawala, for the Applicant.

Mr. S.R. Agarkar, APP, for the Respondent/State.

CORAM : N. J. JAMADAR, J.

DATE : APRIL 04, 2024

P.C.:

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

2. The applicant, who is arraigned in C.R. No. 927 of 2021 registered with Dahisar police station for the offences punishable under sections 302, 323, 504, 143, 144, 146, 147 and 148 of Indian Penal Code, 1860 and section 37(1)(a) read with 135 of Maharashtra Police Act, 1951, seeks to be enlarged on bail.

3. On 25th July, 2021 the first informant was apprised that one Satish Bhardwaj (the deceased) was being assaulted by Subhash Parkhe (accused No. 2), Govind Parkhe (accused No. 1) and 7 to 8 other persons near a public toilet. The first informant rushed to the spot. The first informant noticed that the applicant Prasad Madnole,

Subhash Parkhe (accused No. 2), Govind Parkhe (accused No. 1), Ishwar Naidu (accused No. 4) and 3 to 4 other persons were abusing and assaulting the deceased. The applicant was allegedly armed with iron rod. Subhash Parkhe (accused No. 2) had bamboo stick. The applicant and the co-accused assaulted the deceased, despite the first informant and other persons trying to dissuade the applicant and co-accused from assaulting the deceased. In the process, Govind Parkhe (accused No. 1) took out a knife and gave blows by means of knife on the person of the deceased. The first informant and others were also threatened with dire consequences, if they intervened. The deceased was taken to Shatabdi Hospital. He was declared dead. The applicant came to be arrested on 25th July, 2021.

4. At the outset, Mr. Pandey, learned counsel for the applicant, submitted that the co-accused Subhash Parkhe (accused No. 2) and Ishwar Naidu (accused No. 4) have been released on bail by this Court by an order dated 24th February, 2024. The applicant is similarly circumstanced. The difference being that the applicant is attributed with the role of assault by means of iron rod. However, since the medical evidence indicates that the deceased died on account of stab injuries, the applicant is entitled to claim parity

with co-accused Nos. 2 and 4.

5. Mr. Agarkar, learned APP, countered the submissions on behalf of the applicant. It was urged that the applicant has been specifically named as the person who assaulted the deceased by means of iron rod. Therefore, the principle of parity will not apply as an overtact with deadly weapon is attributed to the applicant. In any event, since the applicant was the member of unlawful assembly, the applicant can not wriggle out of the situation.

6. While releasing the co-accused Ishwar Naidu and Subhash Parkhe, this Court had, inter alia, observed as under:-

6] I have perused the FIR and the statements of the alleged eye witness. The role of assault by means of knife has been attributed to Govind (A1), whereas co-accused Parshya (A3) assaulted the deceased by means of an iron rod. It would be contextually relevant to note that the autopsy surgeon has opined that the deceased died on account of haemorrhage and shock due to multiple stab injuries. In Column No.17 of the PM Report the autopsy surgeon has mentioned two stab injuries and one incised wound. In addition, four contusions were noted.

7] Prima facie, if the statements of the witnesses are considered in conjunction with PM Report, it becomes evident that the cause of death was stab injuries attributable to the assault by Govind (A1). From perusal of the statement of Rugvesh Bhalekar, who had accompanied the deceased to the scene of occurrence, it appears that the accused party was already present at the said place. The witness Rugvesh and the deceased went thereat on a motorcycle. Thereupon, an altercation ensued as the

deceased went near the applicant and the co-accused. In the circumstances, whether the applicants also knew that the offence of murder would be committed in prosecution of the common object of the unlawful assembly, would be a matter for adjudication at the trial.

8] The applicants are in custody since 25th July, 2021. It is unlikely that the trial can be concluded within a reasonable period. Thus, having regard to the role attributed to the applicants and prima facie material to show that the cause of death was the stab injuries, which is attributable to Govind (A1), I am persuaded to exercise discretion in favour of the applicants.

7. Evidently, the fact that the cause of death was stab injuries, prima facie attributed to the assault by Govind Parkhe (accused No. 1) weighed with this Court. The long period of incarceration also weighed with the Court, in considering the prayer for bail.

8. Evidently, the co-accused, who are released on bail, were also allegedly the members of the unlawful assembly in prosecution of the common object of which the alleged offences were committed. The only difference appears to be that of the applicant having allegedly assaulted the deceased by means of an iron rod. However, as noted in the aforesaid order, the cause of death was attributable to the stab injuries allegedly inflicted by Govind (accused No. 1). Conversely, the contused abrasion and contusions noted by the autopsy surgeon were not on the fatal parts of the body of the

deceased. Can the applicant be also roped in for the offence punishable under section 302 of the Penal Code by invoking the principles of constructive criminality, would be a matter for adjudication at the trial. Qualitatively, there does not appear much difference in the role attributed to the applicant and co-accused Subhash Parkhe (accused No. 2), who was also allegedly armed with a bamboo stick.

9. I am, therefore, inclined to hold that the principle of parity applies.

Hence, the following order.

ORDER

1] The application stands allowed.

2] The applicant Prasad Shivanand Madhole be released on bail in C.R. No. 927 of 2021 registered with Dahisar police station, on furnishing a P.R. Bond of Rs. 30,000/- with one or more sureties in the like amount.

3] The applicant shall mark his presence at Dahisar police station on the first Monday of every month between 11 am to 1 pm for a period of three years or till conclusion of the trial, whichever is earlier.

4] The applicant shall not tamper with the prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses or any person acquainted with the facts of the case.

5] 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.

6] The applicant shall regularly attend the proceedings before the jurisdictional Court.

7] 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 disposed.

(N. J. JAMADAR, J.)