

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 2064 OF 2023

SANTOSH
SUBHASH
KULKARNI

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Pranil Prakash Warawdekar ...Applicant
Versus
State of Maharashtra and anr. ...Respondents

Mr. Akshata Borade, a/w Saili Sachin M., i/b Sugandh
Zende, for the Applicant.

Mr. S. R. Aagarkar, APP for the State/Respondent.
PSI R. N. Loke, Sakinaka Police Station, present.

CORAM: N. J. JAMADAR, J.
DATED: 12th JANUARY, 2024

ORDER:-

1. Heard the learned Counsel for the parties.
2. This is an application for bail in connection with CR No.1081 of 2021 registered with Sakinaka Police Station, Mumbai, for the offences punishable under Sections 304(2) and 504 read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code").
3. The incident occurred at a Tadi shop. There was an altercation between the applicant and co-accused Akbar Shaikh, on the one part, and, Mukesh, the deceased, on the other part, as the applicant collided with the table on which the deceased was sitting. The applicant and the co-accused

allegedly dragged the deceased out of the Tadi Shop. Co-accused Akbar initially assaulted the deceased. Thereafter, the applicant kicked the deceased.

4. The learned Counsel for the applicant submitted that co-accused Akbar, who is similarly circumstanced, has been granted bail by this Court by an order dated 4th August, 2023. The Court has observed that there is no *prima faice* material to indicate that the deceased met homicidal death. The applicant is also entitled to the same dispensation.

5. The learned APP resisted the prayer for bail. It is submitted that the CCTV footages indicate that the applicant had assaulted the deceased, which lead to the death of the deceased.

6. I have perused the order passed by this Court in BA/3353/2022 on 4th August, 2023. This Court, *inter alia*, observed that there is no material to indicate that the death was a homicidal. The observations in paragraph 4 read as under:

“4. The medical record *prima facie* reveals that the deceased had suffered two abrasions – one on the right side of the nose and the other on the left knee. There were no other external injuries on his body. Brain was congested and oedematous. Petechial hemorrhages present in membrane. The Doctor had reserved the opinion as regards the cause of death. On 16/03/2023 this Court had directed the prosecution to place on record the final opinion as

regards cause of death. No such certificate is placed on record till date. Hence, at this stage there is no material to indicate that the death was homicidal. Be that as it may, the incident was not pre-planned. The Applicant was not armed with any weapon and he had not inflicted any injury on the vital part of the body. The question whether the act committed by the Applicant has caused the death or not is a matter or trial.”

7. In view of the aforesaid observations, the very applicability of the provisions contained in Section 304 of the Penal Code would be the matter for adjudication at the trial. Since the role attributed to the applicant is almost identical to that of the co-accused, the applicant also deserves the same dispensation.

8. Hence, the following order:

: O R D E R :

- (i) The application stands allowed.
- (ii) The applicant Pranil Prakash Warawdekar be released on bail in CR No.1081 of 2021 registered with Sakinaka Police Station, Mumbai, 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 the concerned police station on the first Monday of every alternate month in between 10.00 am. to 12.00 noon for the period of two 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 disposed.

[N. J. JAMADAR, J.]