



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2096 OF 2023**

Chirag @ Kaliya Shobnath Thakur (Singh)	...	Applicant
versus		
The State of Maharashtra	...	Respondent

Mr. Tarun S. Sharma with Ms. Varsha Sharma, for Applicant.
Mrs. G.P.Mulekar, APP for State.

CORAM: N.J.JAMADAR, J.

DATE : 11 JANUARY 2024

P.C.

1. Heard the learned Counsel for the parties.
2. The applicant who has been arraigned in C.R.No.160 of 2021 registered with Navghar Police Station for the offences punishable under Section 302 read with Section 34 of the Indian Penal Code, has preferred this application to enlarge him on bail .
3. The first informant, the then PSI of Navghar Police Station, lodged a report to the effect that on 5 March 2021, he was informed that a person is lying in a motionless state at the Municipal ground in front of S.M.College. The first informant and the police team went to the spot. The deceased was lying in a motionless state. He was shifted to Tembha Hospital and was declared dead. The first informant returned to the police station. 3-4 persons had brought another person at the police station. The latter was stated to be the thief. The said person was assaulted by those

four persons, including the applicant. It transpired that the applicant had also assaulted the deceased suspecting him to be the thief, and, thereafter, assaulted the person who was brought to the police station when he committed theft of mobile phone in a room.

4. Learned Counsel for the Applicant submitted that there is no direct evidence. On the night of the occurrence, two persons who were suspected to be the thieves, were separately apprehended and assaulted by the persons in the locality at different points of time. The statement of Abhishek @ Vicky who was subsequently assaulted suspecting him to be a thief, on which the prosecution places reliance, does not bear the weight of the accusation. The said person claimed that he had witnessed the occurrence which took place at a distance of about 200 meters from the ladder of a KG School. Thus, the applicant deserves to be enlarged on bail.

5. Learned APP resisted the application. It was submitted that the applicant and the co-accused had mercilessly assaulted the deceased suspecting him to be a thief and had also assaulted the witness Abhishek @ Vicky. There is overwhelming evidence to indicate that the applicant was one of the assailants. Learned APP banked upon the statements of the witnesses and the CCTV footages which allegedly captured the applicant assaulting the deceased.

6. I have carefully perused the report under Section 173 of the Code of Criminal Procedure and the documents annexed with it. The first informant has

stated that the injured Abhishek who was brought to the police station by four persons including the applicant, after assaulting him, suspecting him to be the thief, had stated that those assailants had also assaulted the deceased who was found lying at the ground and was shifted to the hospital by the first informant, sometime ago. Had that been the only material, the submission on behalf of the applicant would have carried some substance.

7. The post-mortem report of the deceased indicates that the deceased had sustained multiple external injuries on both upper and lower limbs, back and abdomen. There was a ligature mark on the neck. There were injuries on the head as well. The Medical Officer opined that the cause of the death appeared to be intro-cranial hemorrhage and brain contusion.

8. The aforesaid nature of the injuries noted by the Autopsy Surgeon, lends prima facie, support to the claim of the first informant that the body of the deceased was found lying in a motionless state with numerous injuries on his person at a Municipal ground. Prima facie, the material on record indicates that the deceased was belabored by a number of persons.

9. Is there prima facie nexus to connect the applicant with the said crime ? In addition to the statement of Abhishek @ Vicky who was also assaulted by the applicant and the co-accused suspecting him to be the thief, there is a statement of Jitendra Patil, who stated that, on the night intervening 5 and 6 March 2021, at about

3.00 a.m., the applicant and co-accused Gavva @ Vimlesh were assaulting an unknown boy. When inquired, the applicant and the co-accused stated that the said boy was the thief. They did not heed to his advise to take him to the police station, instead continued to beat the said boy. Paru Pandit stated that on the morning 6 March 2021, Abhishek @ Vicky injured, was apprehended after he committed theft of the mobile phone. At that time, co-accused Amarjeet stated that they had brutally beaten another thief on the previous night. Amarjeet called his associates, including the applicant, who came and beat the injured Abhishek @ Vicky and took him out of Indra Nagar Slum. The transcript of the CCTV footages indicates that the applicant was found assaulting both the deceased, in the first occurrence, and the injured Abhishek, in the second occurrence.

10. In the aforesaid view of the matter, at this stage, it would be difficult to drawn an inference that no prima facie case is made out against the applicant. The statement of the persons who had seen the applicant assaulting the deceased along with the co-accused, prima facie, find support in the transcript of the CCTV footages.

11. In the circumstances, I am not inclined to exercise the discretion in favour of the applicant.

12. Hence, the following order :

ORDER

- (i) The 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.

(N.J.JAMADAR, J.)