

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

**BAIL APPLICATION NO.2100 OF 2023**

VISHAL  
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Jayanti Waghji Heliya

...Applicant

vs.

The State of Maharashtra

...Respondent

Mr. Akash Kavade, for the Applicant.

Mrs. Geeta Mulekar, APP, for the Respondent/State.

Mr. Walke, PSI, Tardeo police station.

**CORAM : N. J. JAMADAR, J.**

**DATE : JANUARY 08, 2024**

**P.C.:**

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

2. This is an application for bail. The applicant has been arraigned in C.R. No. 393 of 2021 registered with Tardeo police station for the offence punishable under section 302 read with 34 of Indian Penal Code, 1860 and section 37(1)(a) read with 135 of Maharashtra Police Act, 1951. The applicant and his brother Hitesh Heliya were been arraigned for having committed murder of Dharmesh Baria (the deceased).

3. The gravamen of indictment against the applicant is that in the night intervening 2<sup>nd</sup> and 3<sup>rd</sup> June, 2021, in between 3.45 am to 4.15 am, an altercation ensued between the applicant and his brother on the one part and the deceased on the other part. Initially the deceased had stabbed co-accused Hitesh, in the stomach. The

applicant, who is the cousin of co-accused Hitesh allegedly snatched knife from the deceased and unleashed blows leading to the death of the deceased.

4. The learned counsel for the applicant submitted that the evidence on record would indicate that the deceased was the aggressor. The deceased had given blow by means of knife on the stomach of Hitesh. The intestine and omentum were coming out. By way of private defense and at the spur of moment, the applicant allegedly assaulted the deceased. There was no intention to cause the death of the deceased. The learned counsel for the applicant invited attention of the Court to the observations of the learned Session Judge in the order dated 20<sup>th</sup> January, 2023 whereby the co-accused Hitesh Heliya came to be discharged from prosecution.

5. The learned APP resisted the prayer for bail. It was submitted that the applicant had given a number of blows which run counter to the applicant's version that there was no intent to cause the death of the deceased. The learned APP further submitted that there are eye witnesses who have deposed to the assault perpetrated by the applicant. Therefore, the applicant does not deserve to be released on bail.

6. It would be suffice to extract the observations of the learned

Additional Session Judge in paragraphs 7 and 8 of the order dated 20<sup>th</sup> January, 2023 discharging the co-accused Hitesh. They read as under.

7] I have perused the evidence of the witnesses. As per the evidence of the witnesses, it is seen that the entire statements indicate that it was the deceased who had arrived armed, to the place of the applicant/accused and is also seen to be following the deceased, armed, to assault him in the CCTV footage prior to the said incident. It is also part of record that the deceased had assaulted the present applicant/accused and it has caused him serious injuries so much so that there is rupture on his stomach and the intestine has come out. None of the witnesses or the prosecution state that the present applicant/accused assaulted the deceased.

8] It is alleged that the present applicant/accused participated by carrying the weapon, apparently it is seen contrary as the deceased was carrying the weapon initially. In such circumstances, on considerations of the entire facts of the case, there is nothing on record to relate the present applicant/accused to the said offence except his presence at the

place of incident. It is also apparent that the present applicant/accused had suffered injuries at the inception before the deceased had suffered any injuries. The CCTV footage shows the deceased to be prima facie the instigator and assaulter in the present entire incident which has resulted in his unfortunate death. Thus, the CCTV footage of the applicant /accused coming out of the lift, does not show that he was carrying any weapon. In such circumstances, the evidence of the prosecution all throughout does not in any manner support the case of the prosecution, much so to frame the charge against the present applicant/accused.

7. The aforesaid observations indicate that the deceased was armed. The applicant was initially unarmed. The deceased was the aggressor. The deceased had given a blow by means of knife on the hypochondriac region of Hitesh. In the circumstances, the submission on behalf of the applicant carries substance.

8. The questions as to whether the applicant caused injuries on the person of the deceased in exercise of the rights of private defence, was the right exceeded and whether the offence would fall within the ambit of section 302 of the Penal Code, would warrant

adjudication at the trial. The applicant has been in custody for two and a half years. In the aforesaid view of the matter, I am impelled to hold that a case for exercise of discretion made out.

Hence, the following order.

### **ORDER**

- 1] The application is allowed.
- 2] The applicant Jayanti Waghji Heliya be released on bail in C.R. No.393 of 2021 registered with Tardeo 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 Tardeo police station on the first Monday of every alternate month in between 10 am to 2 noon till conclusion of the trial.
- 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.)**