

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2101 OF 2023

Sandip Raju Dhaamle

...Applicant

vs.

The State of Maharashtra

...Respondent

VISHAL
SUBHASH
PAREKAR

Mr. Raju Suryawanshi, for the Applicant.

Mr. Tanveer Khan, APP, for the Respondent/State.

Mr. B.D. Pawar, Kalyan Taluka police station.

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VISHAL SUBHASH
PAREKAR
Date: 2024.03.08
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CORAM : N. J. JAMADAR, J.

DATE : MARCH 06, 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.489 of 2021 registered with Kalyan police station for the offences punishable under sections 302, 323, 504 read with 34 of Indian Penal Code, 1860 seeks to be enlarged on bail.

3. The prosecution case runs as under:-

On 10th September, 2021 an altercation ensued between Dinesh Suradkar, the first informant, and the applicant over a trivial issue. There was a fisticuffs between the applicant and the first informant. Anil Dudhade (the deceased), a resident of the same locality came to the rescue of the first informant. Dipak Dhaamle, the brother of the applicant and the co-accused perceived that the deceased was assaulting the applicant. Co-accused Dipak Dhaamle

allegedly whipped out a knife and unleashed blows. The deceased sustained bleeding injuries and eventually succumbed to those injuries.

4. Mr. Suryawanshi, the learned counsel for the applicant, submitted that the applicant did not share the common intention with the co-accused. The applicant was not armed with any weapon. The incident occurred at the spur of the moment over a trivial issue. The applicant has been in custody since 11th September, 2021. As the conclusion of the trial may take time, the applicant be enlarged on bail.

5. The learned APP countered the submissions on behalf of the applicant. It was submitted that the statements of the witnesses recorded under section 164 of the Code of Criminal Procedure, 1973 indicate that the applicant was also armed with a knife and assaulted the deceased. According to learned APP, even the allegations in the FIR make out a case of common intention. Therefore, the applicant does not deserve to be enlarged on bail.

6. I have perused the FIR, statements of the witnesses recorded under section 164 of the Code, the transcript of the CCTV footages and the postmortem report.

7. Evidently, the deceased met a homicidal death. In the FIR, the first informant had attributed the role of causing hurt by means of

knife to Dipak Dhaamle, the brother of the applicant. If the allegations in the FIR are considered, it prima facie becomes evident that, initially, the quarrel was between the applicant and the first informant and when the deceased intervened, the co-accused Dipak and the applicant assaulted the deceased and gave blows by means of knife.

8. In the statement recorded under section 164 of the Code, the first informant has, however, asserted that the applicant also assaulted the deceased by means of knife. Likewise, the sister and mother of the deceased have stated that the applicant was also armed with knife and assaulted the deceased. In contrast, the independent witnesses namely Ganesh Uphale and Dipak Veer have attributed the role of assault by knife to co-accused Dipak Dhaamle only.

9. In the backdrop of the allegations in the FIR and the genesis of the occurrence, the prosecution version appears to be prima facie more consistent with the case of the co-accused Dipak assaulting the deceased by means of knife. In the circumstances of the case, the question as to whether the applicant shared the common intention to commit murder of the deceased, warrants adjudication at the trial.

10. The applicant has been in custody since September, 2021.

Trial will take time. The applicant appears to have roots in society. The apprehension on the part of the applicant can be taken care by imposing conditions. Hence, I am inclined to release the applicant on bail.

Hence, the following order.

ORDER

- 1] The application stands allowed.
- 2] The applicant be released on bail in C.R. No.489 of 2021 registered with Kalyan 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 Kalyan Taluka police station on the first Monday of every alternate month between 11 am to 1 pm for a period of three years or till conclusion of the trial.
- 4] The applicant shall not enter the limits of village Mharalgaon, Tal. Kalyan till the conclusion of the trial.
- 5] 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.

6] 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.

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

8] 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.)