



Sayali Upasani

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 2146 OF 2023

Arman @ Mohd. Ishrak Ansari	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr. Raviraj Parmane, for Applicant.

Mr. S. R Aagarkar, APP for State/Respondent.

CORAM:- N. J. JAMADAR, J.

DATED:- 19th JANUARY, 2024

PC:-

- 1) Heard the learned Counsel for the applicant and the learned APP for the State.
- 2) The applicant, who is arraigned in CR No. 683 of 2021 registered with Narpoli police station, for an offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code"), has preferred this application to enlarge him on bail.

3) Haresh Aahir, the first informant, runs 'Siddharth Enterprises', which is engaged in the business of Radium Sticker Rolls. Eight employees who were engaged in loading, unloading and cutting of Radium Sticker Rolls. Raju Kyatam (the deceased) and Mohammad Aasif @ Sakib Ansari, the co-accused were two of them. The applicant was the Manager, who supervised the work

4) In the month of October 2021, there was a quarrel between the deceased and Mohammad Ansari (the co-accused). The first informant and the applicant had reasoned with them and they had assured not to quarrel in future.

5) On 3rd November, 2021, the work was underway as usual. One Sanjaybhai had come to the cabin of the first informant to place an order. At about 1.30 pm, the applicant went to the first informant's cabin and asked him to accompany him to the first floor as something had happened to Raju.

6) Raju was lying in a corner of the first floor. His throat was slit. There was bleeding. A Radium cutter was lying thereat. The said cutter had blood stains. Sanjubhai came to the said spot. Police were informed. At that time, the applicant informed the first informant that he had seen Mohammad Ansari, the co-accused running away from the premises of Siddharth

Enterprises hurriedly in a bewildered state. Hence, the first informant lodged a report against Mohammad Ansari.

7) During the course of investigation, especially upon viewing the CCTV footage, it allegedly transpired that there was a telephonic conversation between the applicant and the co-accused Mohammad Ansari and the applicant had allowed Mohammad Ansari to go away after the act and thereafter, reported the incident to the first informant. Alleging that the applicant was also a privy to the alleged murder of deceased Raju, the applicant came to be arrested. Post completion of the investigation, charge-sheet has been lodged. CCTV Footage and transcript of the alleged conversation between the applicant and the co-accused Mohammad Ansari are pressed into service to establish the complicity of the applicant.

8) The learned Counsel for the applicant submitted that the applicant has been roped in on the basis of mere suspicion. Taking the Court through the transcript of the CCTV Footage, the learned Counsel for the applicant submitted that the material on record does not indicate that the applicant had accompanied the co-accused to the first floor where the deceased was allegedly done to death. The only allegation against the applicant is that the applicant had allowed a safe passage to the

co-accused and thereafter reported the matter to the first informant. It was further submitted that the transcript of the telephonic conversation between the applicant and the co-accused Mohammad Ansari also does not incriminate the applicant as it does not record the exact conversation which the applicant had with the co-accused. The applicant has been in custody since November, 2021. Thus, the applicant deserves the exercise of discretion.

9) In opposition to this, Mr. Aagarkar, the learned APP resisted the prayer of bail. It was submitted that the transcript of the CCTV Footage indicates that the applicant was in touch with the co-accused Mohammad Ansari a few moments before the alleged occurrence and had allowed the co-accused Mohammad Ansari to leave the premises safely and thereafter reported the matter to the first informant. Co-accused Mohammad Ansari, who allegedly committed murder of the deceased, has since been absconding. In these circumstances, release of the applicant on bail would hamper the trial of a case involving a serious offence. Therefore, the applicant does not deserve to be released on bail.

10) I have carefully considered the report under Section 173 of the Code of Criminal Procedure, 1973 and the documents annexed with it and the submissions canvassed across the bar.

11) Evidently, there does not appear to be any eyewitness to the alleged occurrence. Prima facie, it does not appear to be the prosecution case that the applicant was the assailant. On the contrary, it is the case of the prosecution that the applicant facilitated the commission of the alleged offence and safe passage for the co-accused. The charge is proposed to be substantiated by banking upon the CCTV footages and telephonic conversation between the applicant and the co-accused Mohammad Ansari. Thus, the evidence against the applicant is predominantly of circumstantial nature.

12) The transcript indicates that at 1.26.42 pm, the deceased had followed accused Mohammad Ansari towards the scene of occurrence. At about 1.29 pm, the applicant looked into the scene of occurrence and returned. At about 1.30 pm, co-accused – Mohammad Ansari was seen going out of the scene of occurrence while cleaning his hands. At about 1.31.45 pm, the applicant and another lady employee had seen co-accused – Mohammad Ansari leaving the premises. At 1.34.02 pm the applicant allegedly confirmed as to whether the co-accused-Mohammad Ansari left the premises of the company and from 1.35.15 pm to 1.35.35 the applicant was seen talking on the phone and pacing around the main gate of the premises. At

1.35.35 pm, the applicant informed the first informant about the alleged occurrence.

13) In the transcript of the telephonic conversation, it transpired that the co-accused had inquired with the applicant as to whether somebody was at a specified place and the applicant seemed to have responded in the affirmative. Co-accused then told the applicant not to go to the first floor. The applicant enquired why. However, the further conversation between the applicant and the co-accused Mohammad Ansari, it seems, could not be recorded.

14) In the light of the aforesaid nature of the material pressed into service against the applicant, it is necessary to note that the alleged incident lasted for a few minutes. The material on record, however, does not indicate that the applicant either accompanied the co-accused to the scene of occurrence or was otherwise present at that time when the deceased was allegedly done to death. The entries in the panchanama regarding the transcript of the CCTV footages appear to have an element of inferences drawn by the Panchas and investigation agencies. Whether the applicant was a privy to the alleged murder and shared the common intention, in the circumstances of the case, would hinge on the reliability of evidence to be adduced at the trial.

15) The material on record is required to be appreciated in light of the fact that the applicant was the manager of the factory premises where the co-accused and the deceased were employed. Therefore, the telephonic conversations between the applicant and the co-accused, are not prima facie incompatible with the innocence of the applicant. The transcript of the telephonic conversation also prima facie does not show that the applicant and the co-accused had a conversation regarding the alleged incident. The aspect of a few minutes of delay in reporting the matter to the first informant after allegedly noticing that the co-accused Mohammad Ansari had gone out of the factory premises, at this stage, appears to have an element of inference.

16) In substance, whether these two circumstances pressed against the applicant are sturdy enough to bear the weight of the accusation of the applicant having shared the common intention to commit the murder of the applicant, in my considered view, would be a matter for adjudication at the trial.

17) The applicant is in custody since November, 2021. It is unlikely that the trial can be concluded in a reasonable time.

18) In the aforesaid view of the matter, I am inclined to exercise the discretion in favour of the applicant.

19) Hence, the following order:

: O R D E R :

- (i) The application stands allowed.
- (ii) The applicant Arman @ Mohd. Ishrak Ansari be released on bail in CR No. 683 of 2021 registered with Narpoli police station, for an offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860, on furnishing a P.R. Bond in the sum of Rs.30,000/- with one or two sureties in the like amount, to the satisfaction of the learned Sessions Judge.
- (iii) The applicant shall mark his presence at the concerned Police Station on the first Monday of every month between 10.00 am to 12.00 noon for a period of two years or till conclusion of trial, whichever is earlier.
- (iv) The applicant shall not contact the co-accused, tamper with the prosecution evidence and/or give threat or inducement to the first informant, any witness and any of the persons acquainted with the facts of the case.
- (v) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of 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 observations made hereinabove.

[N. J. JAMADAR, J.]