

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 2241 OF 2023

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Laxmi Yogesh Kadam ...Applicant

Versus

State of Maharashtra ...Respondent

WITH

BAIL APPLICATION NO. 2236 OF 2023

Yogesh Raju Kadam ...Applicant

Versus

State of Maharashtra ...Respondent

Ms. Janaki Ravi, for the Applicant.

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

PI Anil Jaykar, Bhandup Police Station, present.

CORAM: N. J. JAMADAR, J.

DATED: 3rd JANUARY, 2024

ORDER:-

1. Heard the learned Counsel for the applicants and the learned APP for the State.

2. The applicants – husband and wife due - have preferred these applications to enlarge them on bail in connection with CR No.503 of 2022, registered with Bhandup Police Station, Mumbai, for the offences punishable under Sections 302, 201, 143, 147 and 149 of Indian Penal Code, 1860 (“the Penal Code”).

3. The applicant Laxmi is the daughter of Vishnu Bhandari – accused No.1, who was in a relationship outside marriage with Vinod Satam (the deceased). Applicant Yogesh is the husband of Laxmi. Applicant Laxmi was born to Vishnu by her first husband.

4. The deceased was allegedly given in to the vice of consuming liquor, and used to rake up quarrels with accused No.1 Vishnu frequently. On 25th July, 2022 when the deceased raked up quarrel with accused No.1 Vishnu the applicants and Rajendra Bhandari; the brother of Vishnu and the child in conflict with law – the son of Vishnu and deceased, were also present at home. All the accused formed an unlawful assembly and in prosecution of the common object of the unlawful assembly assaulted the deceased by means of cooker lid, knife and cricket bat.

5. Qua the applicant Laxmi, it is alleged, she had assaulted the deceased by means of cooker lid. The applicant Yogesh had pulled the deceased down when he attempted to charge on the person of the applicant Laxmi. The applicant Yogesh, alongwith other co-accused had allegedly taken the injured in a auto-rickshaw with a view to destroy the evidence.

6. The learned Counsel for the applicants submitted that, in fact, the deceased was the aggressor. At the time of the alleged occurrence Laxmi was carrying pregnancy. As the deceased had charged on the person of the applicant Laxmi, the applicants had retaliated in exercise of their right of private defence. The material on record, according to the learned Counsel for the applicant, would indicate that the deceased had frequently abused and assaulted Vishnu Bhandari, the mother of applicant Laxmi, and several reports were lodged with the police. There is no direct evidence. It was submitted that the case rests on circumstantial evidence and, therefore, the applicants deserve exercise of discretion.

7. In opposition to this, the learned APP submitted that there are eye witnesses, who have specifically stated about the role of the applicants in perpetrating the assault on the deceased. The PM Report indicates that the deceased had sustained multiple injuries and on account of the head injury the deceased died. It was submitted that the applicant Laxmi was one of the assailants as she was armed with the cooker lid. The applicant Yogesh was also instrumental in destroying the evidence in as much as applicant Yogesh had carried the injured in the auto-

rickshaw with a view to destroy the body. Hence, the applicants do not deserve the exercise of discretion.

8. I have perused the FIR and the statement of the witnesses. Evidently, the genesis of the alleged offences is in the discord between the deceased and accused No.1 Vishnu Bhandari, who were stated to be in relationship for long. On the day of occurrence there was an initial quarrel between the deceased and accused No.1 Vishnu Bhandari. Later on, the deceased again raked up quarrel with accused No.1 Vishnu Bhandari and the persons, who were in her room, were also abused by the deceased.

9. The statements of the witnesses indicate that the deceased had charged on the person of the applicant Laxmi. Undoubtedly, the applicant Laxmi was allegedly armed with cooker lid. The role attributed to the Laxmi was that of giving blows by means of cooker lid on the back of the deceased. After the deceased charged on the person of applicant Laxmi, applicant Yogesh caught hold of the deceased, pulled him down and thereupon co-accused Vishnu Bhandari took the cooker lid from the applicant Laxmi and gave blows by means of cooker lid on the head and face of the deceased. Co-accused Rajendra assaulted

the deceased by means of knife. The child in conflict with law gave blows by means of bat.

10. In the circumstances of the case, whether the applicant Laxmi and Yogesh also shared the common object of unlawful assembly to commit murder of the deceased or knew that the said offence would be committed in prosecution of the common object of the unlawful assembly, warrants adjudication at the trial.

11. It appears that the incident occurred as the deceased had raked up quarrel with accused No.1 Vishnu. Under the influence of liquor, the deceased had allegedly abused and assaulted accused No.1 Vishnu, in the second round of quarrel. The deceased had charged on the person of applicant Laxmi as well. Was it a case of exercise of right of private defence may also warrants determination. In the circumstances of the case, I am impelled to hold that a *prima facie* case is made out to exercise the discretion in favour of the applicant Laxmi and Yogesh.

12. So far as the allegations of the attempt to destroy the body of the deceased, the allegations have been made against co-accused Satish as well as Vishnu Bhandari, Rajendra Bhandari and a child in conflict with law. The witnesses have stated that

the applicant Yogesh and the other persons had taken the deceased in an injured condition in an auto-rickshaw.

13. The applicants have been in custody since 26th July, 2022. Investigation is complete. Further detention of the applicants does not seem warranted.

14. Hence the following order:

: O R D E R :

- (i) Applications stand allowed.
- (ii) Laxmi Yogesh Kadam, applicant in BA/2241/2023 and Yogesh Raju Kadam, applicant in BA/2236/2023 be released on bail in CR No.503 of 2022 registered with Bhandup Police Station, Mumbai, on furnishing a PR Bond in the sum of Rs.30,000/- with one or two sureties in the like amount, each.
- (iii) The applicants shall attend Bhandup Police Station, Mumbai, 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 applicants shall not contact the first informant or any of the witnesses or give threat or inducement to the

first informant or any of the witnesses or any person acquainted with the facts of the case.

- (v) The applicants shall furnish the details of their permanent address and cell phone numbers to the Investigating Officer and keep him informed about the change, if any.
- (vi) The applicants 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 co-accused and the trial court shall not be influenced by any of the observations made hereinabove.

Applications stand disposed.

[N. J. JAMADAR, J.]