

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

**BAIL APPLICATION NO.2261 OF 2023
WITH
INTERIM APPLICATION NO.213 OF 2024**

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VISHAL SUBHASH
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Ashish Pandit Mhatre

...Applicant

vs.

The State of Maharashtra

...Respondent

Mr. Vinod Kashid a/w. Mr. Sumit Bhoite, for the Applicant.

Mr. S.R. Agarkar, APP for the State.

Mr. Pawan Mali, for the Intervener.

Mr. G.N. Pote, Kalyn Crime Branch.

CORAM : N. J. JAMADAR, J.

DATE : MARCH 07, 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. 703 of 2022 registered with Manpada police station for the offences punishable under sections 302, 307, 427, 323, 504 and 506 read with 34 of Indian Penal Code, 1860 seeks to be enlarged on bail.

3. On 11th September, 2022 there was a collision between the tempo driven by the first informant and a car driven by Pandit Mhatre (accused No. 1). An altercation ensued. Pandit Mhatre, who is the father of the applicant, initially allegedly assaulted the first informant and his uncle. Despite the first informant showing willingness to compensate for the loss, Pandit Mhatre allegedly

called few persons. The applicant and two unknown persons came thereat. In the meanwhile, Pandit Mhatre took out a knife like sharp object from the car and stabbed the first informant. When the passerby and nearby residents tried to intervene, Pandit Mhatre threatened to cause harm to them by brandishing the weapon. Vikas Mishra, the deceased, who tried to rescue the first informant was assaulted by Pandit Mhatre, accused No. 1. Eventually, the deceased was shifted to Asian Institute of Medical Sciences, Dombivali. He succumbed to the injuries.

4. The learned counsel for the applicant submitted that the role attributed to the applicant is that of giving blow by means of wooden log on the tempo of the first informant. The applicant was not armed with the weapon, by means which the injuries were allegedly caused to the first informant and the deceased. In fact, in the supplementary statement the first informant has disowned the version reported in FIR. At best, the applicant's presence can be said to have been made out. However, there is no material to rope in the applicant for the offence punishable under section 307 and 302 of the Penal Code.

5. It was further submitted that the applicant had, in fact, taken the deceased to hospital and incurred the expenses of medical treatment.

6. The learned APP contested the prayer for bail. Attention of the Court was invited to the statements of two witnesses who had stated that the applicant took the deceased to hospital.

7. Mr. Mali, learned counsel for the first informant, submitted that the endeavour of the applicant to derive benefit from the fact that he had taken the deceased to hospital and even paid the expenses of the treatment, does not merit acceptance as an inference is deducible that the applicant had in fact assaulted the deceased while purportedly shifting the deceased to hospital in his car.

8. Attention of the Court was invited to the transcript of the CCTV footages and the statements of the witnesses which do not indicate that the deceased was assaulted on head and yet the autopsy surgeon found that there was subdural heomotoma over right parietal region of the deceased. Mr. Mali submitted the said injury indicates that deceased was assaulted on the way to the hospital by the applicant.

9. Prima facie, it appears that the genesis of the offences is in a road rage. The fact that there was collision between the tempo and the car driven by Pandit Mhatre is borne out by the scene of occurrence panchanama. The prosecution alleges that after the quarrel broke out, Pandit Mhatre (accused No. 1) had called few

persons by making a telephonic call. The applicant was one of them. However, none of the witnesses have stated that the applicant assaulted either the first informant, his uncle or the deceased. The submission of Mr. Mali that the presence of subdural heomotoma over right parietal region on the head of the deceased indicates that the deceased was assaulted while on the way to the hospital, at this stage, appears inferential. Prima facie, there is no material which lends support to the submission sought to be canvassed on behalf of the first informant.

10. In any event, having regard the role attributed to the applicant, the question as to whether the applicant shared the common intention to commit the murder of the deceased and attempt to commit murder of the first informant is a matter for adjudication at trial. In the backdrop of the fact that the incident arose out of a road rage, and the applicant was not present when the initial quarrel broke out, whether there was a prior meeting of minds deserves consideration at the trial.

11. In this view of the matter, I am inclined to exercise the discretion in favour of the applicant.

Hence, the following order.

ORDER

- 1] The application stands allowed.
- 2] The applicant be released on bail in C.R. No.703 of 2022 registered with Manpada police station, on furnishing a P.R. Bond of Rs. 50,000/- with one or more sureties in the like amount.
- 3] The applicant shall mark his presence at Manpada police station on the first Monday of every alternate month in between 11 am to 1 pm till conclusion of the trial.
- 4] The applicant shall not enter the limits of Manpada police station for a period of three years or till conclusion of the trial whichever is earlier.
- 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.

9] Application disposed.

10] In view of above, Interim Application stands disposed.

(N. J. JAMADAR, J.)