

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2466 OF 2023

Kailas Eknath Jadhav	...Applicant
vs.	
The State of Maharashtra	...Respondent

Mr. Vijay Shelar, for the Applicant.
Mr. Y.M. Nakhwa, APP, for the Respondent/State.
Mr. Dnyaneshwar Ladse, PSI, Mulund police station.

CORAM : N. J. JAMADAR, J.
DATE : JANUARY 22, 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.33 of 2023 registered with Mulund (w) police station for the offences punishable under sections 302, 323 and 504 of Indian Penal Code, 1860 seeks to be enlarged on bail.
3. The first informant runs Gopal Diary Farm in a shop owned by Suresh Pitkar (the deceased) at Ambika Nagar, J.N. Road, Mulund (w). He had known the applicant. On 11th January, 2023 at about 10.30 pm while he was cleaning the utensils in front of the diary farm, the applicant allegedly raked up a quarrel on the pretext that water fell on his person. Though the first informant did not respond, the applicant abused and slapped him. People gathered. The deceased, landlord of the first informant, also came thereat.

4. An altercation ensued between the deceased and the applicant in native “*Vadari*” dialect. The applicant allegedly charged on the person of the deceased and gave 4-5 forceful blows on the chest of the deceased. The later fell on the ground. The deceased was taken to the hospital. On the way, the deceased informed that there was excruciating pain in the chest. Eventually, the deceased succumbed to the injuries at Hira Mogi hospital, Mulund. The applicant came to be arrested on 12th January, 2023.

5. The learned counsel for the applicant submitted that the incident had occurred at the spur of the moment. There was no pre-mediation. The applicant had not used any weapon. Fist blows were allegedly given. The deceased was 64 years old. Therefore, the offence would not prima facie fall within the dragnet of section 302 of the Penal Code.

6. The learned App countered the submissions on behalf of the applicant. Inviting attention of the Court to the statements of the witnesses, apart from the first informant, who stated that the applicant gave forceful blows on the chest of the deceased, the learned APP would urge that the death is directly relatable to the assault perpetrated by the applicant.

7. I have perused the postmortem report. The autopsy surgeon noted that there was blakish pigmentation patch over the left side

chest at the level of left nipple. However, on cut section no injury was present. In addition there were two abrasions over left knee and right forearm below right elbow, respectively. Upon internal examination, the autopsy surgeon noted that there were calcification in left anterior descending branch LVH with thickness 3.5 cm. The autopsy surgeon however reserved the opinion awaiting report of analysis.

8. It is true there are statements of the first informant and the witnesses to the effect that the applicant had given 4-5 forceful blows on the chest of the deceased. However, the fact remains that the initial quarrel was between the applicant and the first informant. As the deceased intervened, there was exchange of words between the deceased and the applicant in the native “Vadari” dialect. Thereupon the applicant allegedly assaulted the deceased.

9. Evidently, the applicant was un-armed. In the circumstances of the case, whether the intention of the applicant was to cause the death of the deceased or the applicant knew that the condition of the deceased was such that the blows on the chest would lead to death of the deceased would be a matter for adjudication at the trial. Prima facie, there was no pre-mediation. The incident had occurred over a trivial issue of water allegedly spilling on the

person of the applicant. In the circumstances, whether the offence would fall within the ambit of provisions contained in section 302 or 304 (I) or 304 (II) of the Penal Code, would be a matter for trial.

10. The applicant is in custody since 12th January, 2023. Having regard to the large pendency of the cases, it is unlikely that the trial can be concluded within a reasonable period. I am, therefore, persuaded 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.33 of 2023 registered with Mulund (w) 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 Mulund 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 Mulund (West) for a period of two years or till the conclusion of the trial whichever is earlier except for attending the police station.
- 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.)