



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2615 OF 2023**

Naresh @ Lefti Vasumal Vaswani	...	Applicant
versus		
The State of Maharashtra	...	Respondent

Mr. A.P.Mundargi, Sr. Advocate i/by Ms. Pravada Raut, for Applicant.
Mr. Y.M.Nakhwa, APP for State.
API I.V.Kokare, Vitthalwadi Police Sttion present.

CORAM: N.J.JAMADAR, J.

DATE : 8 FEBRUARY 2024

P.C.

1. Heard the learned Counsel for the parties.
2. The applicant who is arraigned in C.R.No.303 of 2021 registered with Vitthalwadi Police Station for the offences punishable under Sections 302, 307, 353, 333, 326, 143, 147, 148, 149, 201 and 212 of the Indian Penal Code and Section 37(1) and 135 of the Maharashtra Police Act, 1951, has preferred this application to enlarge him on bail.
3. Sanjay Shitlani, the deceased, was a friend of Avinash Naidu, the first informant. On 14 October 2021, the deceased apprised the first informant that Naresh, the applicant, was harassing him to pay money which the deceased allegedly owed to the applicant. The first informant volunteered to reason with the applicant. At about 1.00 a.m. on the night intervening 14 and 15 October 2021, the first informant

and the deceased went to a place in front of Kishan Pavbhaji Center, Sector 13, Ulhasnagar – 4. The applicant along with the co-accused Shashi, Omi and others were present thereat. An altercation ensued. The applicant slapped the first informant. The applicant and his associates started to assault the first informant by means of fist and kick blows. The first informant alleged, he took out a waist belt in his defence. Thereupon, the applicant – Naresh whipped out a knife and assaulted on the stomach, cheek and ear of the first informant. The first informant further alleged, co-accused Shashi @ Sukhi and Omi also assaulted the deceased by means of knife. Police constables in plain clothes came thereat and tried to intervene. Thereupon, the applicant allegedly gave blow by means of knife on the face of police constable Damale. After realizing that the person they assaulted was a police, the applicant and the co-accused fled away. The first informant and the deceased were shifted to the hospital.

4. Initially, on the basis of the report lodged by the first informant, C.R.No.303 of 2021 was registered 143, 147, 148, 149, 307, 326, 353, 333 of IPC. On 21 October 2021, a supplementary statement of the first informant was recorded. The first informant alleged that the money transaction was between the applicant and Pavan. On the same day, the statement of the deceased was recorded. The deceased had stated that on the night of occurrence, he, first informant and Pavan and another friend of Pavan had reached the scene of occurrence. The applicant, co-accused, Shashi, Omi and Soham were present thereat. An altercation ensued. The applicant

slapped the first informant Avinash. The latter took out a waist belt and unleashed blows. Thereupon, the applicant whipped out a knife and started to assault the first informant. When the deceased tried to separate them, the applicant gave blows by means of knife on his head, neck, stomach and hand. Co-accused Shashi and Omi Sahani and their unknown associates assaulted him and the first informant by means of fist and kick blows. In the meanwhile, police arrived and tried to intervene. The applicant Naresh allegedly assaulted one of the policeman.

5. It would be contextually relevant to note that further supplementary statement of the first informant came to be recorded on 29 November 2021 in which the first informant alleged that the applicant and Shashi both assaulted the deceased by means of knife and one of them had assaulted the police. Eventually, Sanjay succumbed to the injuries. Autopsy Surgeon opined that the cause of death was complications in the post operative care following stab injury.

6. Mr. Mundargi, learned Senior Advocate for the Applicant, submitted that there is irreconcilable inconsistency in the statements of the first informant and the Satish, deceased, as to the identity of the assailant. Initially, the first informant had alleged that the applicant had assaulted him and Omi and Shashi @ Sukhi assaulted the deceased. Investigating agency proceeded on the said premise till 21 October 2021, i.e. the day Satish alleged that the applicant had assaulted him by means of knife. Thereafter, the first informant changed his version to suit the prosecution

case. After about a month and half of the occurrence, the first informant alleged that the applicant as well as co-accused Shashi had assaulted the deceased. Moreover, since the deceased died after almost two months of the occurrence, at any rate, offence under Section 302 of IPC cannot be said to have been *prima facie* made out. As the investigation is complete and the three of the accused have been enlarged on bail, the applicant also deserves to be released on bail.

7. Learned APP resisted the prayer for bail. It was submitted that there are eye witnesses to the occurrence who have specifically named the applicant as one of the assailants. Both the applicant and Shashi were armed with weapons. They perpetrated murderous assault on the deceased and attempted to commit murder of the first informant. Furthermore, the accused had assaulted the police personnel who intervened in the fight. In such circumstances, the applicant does not deserve to be released on bail.

8. I have carefully considered the report under Section 173 of the Code and the documents annexed with it. It appears that the informant party had gone to the place where the applicant and co-accused were present. Altercation ensued. It resulted in a fight between the parties, especially the applicant and the first informant. It is true, there is inconsistency between the prosecution version as regards the person who supposedly owed money to the applicant. Initially, the first informant claimed that it was the deceased Satish. Subsequently, it was asserted that, in fact, Pavan owed

money to the applicant. However, at this stage, the said inconsistency may not be of decisive significance.

9. It is imperative to note that the first informant and the deceased were initially not in unison on the point of the person who had assaulted the deceased. However, at this stage, broad probabilities of the prosecution case deserve to be noted. Meticulous evaluation of the evidence is neither warranted nor permissible. The aspect as to who was the aggressor, which was sought to be forcefully canvassed by Mr. Mundargi, is also not required to be delved into elaborately.

10. Few facts deserve to be noted. Apart from the fact that the deceased has sustained injuries including stab wound, which eventually led to his death, there is material to indicate that the first informant had sustained six injuries. There were few lacerations, and stab wound on the abdomen. The last was designated grievous. The first informant had sustained all the injuries by sharp weapon. There is adequate material to indicate that two of the members of the alleged unlawful assembly were armed with knife. Witnesses have alleged that the applicant and the co-accused Shashi were armed with knife. Both the first informant and the deceased sustained stab injuries.

11. It is pertinent to note that one of the policemen who tried to intervene in the fight that had broken out, was also assaulted by knife. Krishna Raju Gawade has stated that co-accused Shashi had assaulted police constable Damale by means of

knife. Pavan Hardasani and Shankar Chauhan have stated that the applicant assaulted the first informant by means of knife. In addition, Pavan stated that the applicant and co-accused Shashi assaulted the deceased Sanjay by means of knife.

12. Prima facie, there is material to indicate that the applicant was allegedly armed with a knife. The applicant initially assaulted the first informant. Witnesses also alleged that the applicant and co-accused Shashi assaulted deceased Satish as well. As noted above, one of the policeman who had came to resolve the quarrel was also assaulted by means of knife. There is medical evidence which prima facie lends support to the claim of the first informant and the other witnesses.

13. In a situation of this nature, I find it rather difficult to accede to the submission of Mr. Mundargi that the inconsistencies in the version of the first informant and the deceased as regards the person who had initially assaulted the deceased, entitles the applicant for bail. The presence of the applicant at the scene of occurrence is deposed to by the first informant and the other witnesses. The role of assault by means of knife has also been attributed. The fact that initially the first informant had not named the applicant as the person who had assaulted the deceased and the said role was attributed to Omi and Shashi, at this stage, is required to be appreciated in the light of the statements of other witnesses. There are eye witnesses and police personnel who attribute to the applicant the initial role of assault to the first informant by means of knife and also state that the applicant assaulted the

deceased as well. What exacerbates the situation is the fact that the policeman in plain clothes was also assaulted.

14. In the circumstances, where two persons armed with knife unleashed blows, the inconsistencies as to the role of a particular assailant can be properly resolved by evidence. In any event, the element of constructive criminality under Section 149 of the IPC may also warrant consideration. Thus, having regard to the nature of the occurrence, the role attributed to the applicant and the persons injured in the occurrence, I am not inclined to exercise the discretion in favour of the applicant.

15. Hence, the following order :

ORDER

(i) The Application stands rejected.

(ii) 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 co-accused and the trial Court shall not be influenced by any of the observations made hereinabove.

Application disposed.

(N.J.JAMADAR, J.)