

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3173 OF 2023

SANTOSH
SUBHASH
KULKARNI

Digitally signed by
SANTOSH SUBHASH
KULKARNI
Date: 2024.01.18
17:51:41 +0530

Akbar Kausr Ali Sayyed ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Prashant Trivedi, a/w Khushboo Jain, i/b Sudha
Dwivedi & Asso., for the Applicant.

Mr. Y. M. Nakhwa, APP for the State/Respondent.

PSI S. S. Ghag, Malavani Police Station, present.

CORAM: N. J. JAMADAR, J.
DATED: 16th JANUARY, 2024

ORDER:-

1. Heard the learned Counsel for the parties.
2. By this application under Section 439 of the Code of Criminal Procedure, 1973, ("the Code"), the applicant, who is arraigned in CR No.503 of 2023 registered with Malwani Police Station, Mumbai, for the offences punishable under Sections 302, 323 and 504 read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code") seeks to be enlarged on bail.
3. Irfan, the first informant is the son of the applicant. The first informant had borrowed an amount of Rs.10,00,000/- from the applicant. As the latter was insisting for repayment

of the said amount there were disputes between the applicant and the first informant.

4. On 27th April, 2023, over the said dispute, an altercation ensued. The applicant alongwith co-accused Rukayya and Gauri raked up quarrel with the first informant and his wife. Co-accused Gauri allegedly pulled the first informant's wife (the deceased) by her hairs. Thereafter the applicant allegedly instigated co-accused Gauri and Rukayya to beat the deceased. Thereupon the co-accused allegedly beat the deceased by means of fist and kick blows. The deceased lay in motionless state. When she was shifted to the hospital, she was declared dead.

5. The learned Counsel for the applicant submitted that the incident had occurred on the spur of moment. There was no pre-meditation. The co-accused assailants Rukayya and Gauri have been released on bail by the learned Additional Sessions Judge. The applicant is suffering from serious ailment and, therefore, the applicant also deserves to be enlarged on bail.

6. The learned APP resisted the prayer for bail.

7. I have perused the allegations in the FIR and the documents annexed with report under Section 173 of the Code. The role of assault by means of fist and kick blows only is attributed to co-accused Rukayya and Gauri. The applicant had allegedly instigated the co-accused. Since the co-accused, who allegedly assaulted the deceased have been granted bail, the applicant is, a fortiori, entitled to same dispensation.

8. In the backdrop of the nature of the accusation, the question as to whether an offence under Section 302 of the Penal Code is *prima facie* made out would also be a matter for adjudication at the trial. I am, therefore, impelled to exercise the discretion in favour of the applicant.

9. Hence, the following order:

: O R D E R :

- (i) Application stands allowed.
- (ii) The applicant Akbar Kausr Ali Sayyed be released on bail in CR No.503 of 2023 registered with Malwani Police Station, Mumbai, on furnishing a P.R. Bond of Rs. 30,000/- with one or more sureties in the like amount.

- (iii) The applicant shall mark his presence at the concerned police station 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 applicant shall not tamper with the prosecution evidence. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any police officer.
- (v) On being released on bail, 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.
- (vi) The applicant 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

the trial Court shall not be influenced by any of the observations made hereinabove.

Application disposed.

[N. J. JAMADAR, J.]