



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3218 OF 2023**

Pradip Mahipal Chauhan @ Nexa

... Applicant

versus

The State of Maharashtra

... Respondent

Mr. N.M.Nadar, for Applicant.

Mr. Tanveer Khan, APP for State.

API Manoj Gujar, Vartak Nagar Police Station, Thane present.

CORAM: N.J.JAMADAR, J.

DATE : 27 MARCH 2024

P.C.

1. Heard the learned Counsel for the parties.
2. The applicant who is arraigned in C.R.No.441 of 2022 registered with Vartak Nagar Police Station for the offences punishable under Sections 302, 307, 143, 144, 146, 147, 148, 149 of Indian Penal Code, has preferred this application to enlarge him on bail.
3. Deepak Pawar (deceased) was the brother of Vilas Pawar, the first informant. A fortnight prior to the occurrence, there was an altercation between Deepak and Prashant, on the one part, and Jagdish (A1), on the other part, over Jagdish consuming liquor near Durga Mata Temple. Jagdish had allegedly abused and threatened the deceased and Prashant, at that time.
4. On 8 December 2022 at about 9.00 p.m., while Deepak and Prashant were standing near Durga Mata Temple, Jagdish (A1), and his associates including the

applicant, came thereat armed with iron rod. The applicant and the co-accused in prosecution of the common object of the unlawful assembly allegedly abused and assaulted the deceased, Prashant and Vilas, the first informant. They unleashed blows by means of iron rod. Co-accused Jagdish whipped out a knife and gave a blow on the chest of the deceased Deepak. Co-accused Jagdish also stabbed Prashant and Vilas. As the deceased, Prashant and Vilas sustained grievous injuries, the applicant and co-accused fled away. The applicant came to be arrested on 9 December 2022.

4. Learned Counsel for the Applicant submitted that the witnesses have pre-dominantly attributed the role of assault by fist and kick blows only to the applicant. Though the injured Prashant and Vilas have attributed the role of assault by means of an iron rod to the applicant, yet the said allegation is not borne out by the post-mortem report as well as injury certificates of Prashant and Vilas. It was further submitted that, in fact, the applicant was not present at the time of the occurrence and he had been roped in only for being a friend of Jagdish (A1).

5. Learned APP resisted the prayer for bail. Learned APP invited attention of the Court to the statements of the witnesses recorded under Section 164 of the Act, 1973, wherein the witnesses have stated that the applicant was armed with an iron rod. Learned APP further submitted that, in any event, since the offences were committed in prosecution of common object of the unlawful assembly, the fact that the applicant did not play any overt act may not be decisive.

6. I have carefully perused the material on record. Prima facie, the role of assault by means of knife is attributed to the accused No.1 Jagdish. Post mortem report indicates that Autopsy Surgeon has noted three external injuries on the person of the deceased, one stab wound and two abrasions. The cause of death was due to cardio respiratory arrest. Likewise, the injury certificates of Vilas and Prashant indicate that both of them had sustained stab injuries and none of them had sustained any injury which is attributable to a hard and blunt object. The statements of witnesses Ramesh Nirbhavane, Luv Budhaji Rokade, Jyoti Rokade, Reshma Nirbhavane indicate that the applicant allegedly assaulted the deceased and injured by means of fist and kick blows. These witnesses have attributed the role of assault by means of iron rod to co-accused Vaibhav and Rakesh.

7. In the aforesaid view of the matter, where four persons armed with iron rods allegedly assaulted the deceased, Vilas and Prashant, there ought to have been marks of injuries by means of hard and blunt object on their person. Prima facie, the medical evidence lends credence to the submission on behalf of the applicant that from the statements of the prosecution witnesses, it appears that the applicant was unarmed.

8. It is true the applicant is alleged to be a member of the unlawful assembly in prosecution of common object of which the assault was perpetrated. It is not necessary that each member of the unlawful assembly should have played an overt

act. However, in a situation of this nature, where one member of the unlawful assembly whipped out a knife and caused injury to the members of the informant party, whether the applicant was also animated by the common object to cause death of Deepak and attempt to commit murder of Prashant and Vilas or knew that those offences were likely to be committed in prosecution of the common object of unlawful assembly, would be a matter for adjudication at the trial.

9. The applicant has been in custody since 9 December 2022. Having regard to the large pendency of cases, it is unlikely that the trial can be concluded within a reasonable period. I am, therefore, inclined to exercise discretion in favour of the applicant. Hence, the following order :

ORDER

(i) The Application stands allowed.

(ii) The Applicant – Pradip Mahipal Chauhan @ Nexa be released on bail in C.R.No.441 of 2022 registered with Vartak Nagar Police Station on furnishing a PR bond in the sum of Rs.30,000/- and one or two sureties in the like amount to the satisfaction of the trial Court.

(iii) The applicant shall not enter the limits of Vartak Nagar Police Station for a period of three years or till the conclusion of the trial, whichever is earlier, except for marking his presence at Vartak Nagar Police Station on first Monday of every alternate month between 11 am to 1 pm for a period of three years or till the 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.)