

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3427 OF 2023

Sarvanan T. Nadar ...Applicant

vs.

The State of Maharashtra ...Respondent

Ms. Shifa Khan i/b. Khan Abdul Wahab, for the Applicant.

Ms. Gauri Rao, APP, for the Respondent No.1/State.

CORAM : N. J. JAMADAR, J.

DATE : APRIL 03, 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.128 of 2020 registered with Dharavi police station for the offences punishable under sections 302 and 307 read with 34 of Indian Penal Code, 1860 and section 142 of the Maharashtra Police Act, 1951 seeks to be enlarged on bail.

3. Paul Nadar (the deceased) was the uncle of first informant. The deceased was working as a cook in Hotel Selva. The deceased used to sleep on a handcart in front of the shop of Anand Dosawala Caterers. Raju Mourya and Dinesh Kanojia were working in the said Anand Dosawala Caterers and used to sleep at night in the said eatery.

4. On the night intervening 8th and 9th March, 2020 at about 3.15

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am, Raju Mourya woke up as there was a commotion. The deceased was raising alarm. The applicant and the co-accused Audy, Vijay and Das were assaulting the deceased by means of fist and kick blows and stones. Fearing for his safety Raju Mourya did not intervene. After a while, the applicant and co-accused left the said spot. Thereupon Paul was admitted in Sion Hospital. Eventually, the deceased succumbed to the injuries on 11th April, 2020. The applicant came to be arrested on 9th March, 2020.

5. Ms. Khan, the learned counsel for the applicant, submitted that the deceased died after about 35 days of the occurrence due to septicemia. The assailants allegedly assaulted the deceased by means of fist and kick blows and stone. None of the eye witnesses namely, Raju Mourya and Dinesh Kanojia has, however, stated as to which of the assailants was armed with stone. Therefore, whether the applicant can be arraigned for an offence punishable under section 302 of the Penal Code appears debatable. In any event, the applicant has been in custody for more than four years and still no witness has been examined.

6. The learned APP submitted that the deceased succumbed to the injuries which he had sustained in the assault perpetrated by the applicants and co-accused in furtherance of their common intention. Moreover, the applicant has antecedents. As many as

four crimes have been registered against the applicant. The applicant was also externed under section 56 of the Maharashtra Police Act, 1951. The applicant committed offence in question by entering into the said locality in breach of the externment order. Therefore, the applicant does not deserve to be enlarged on bail.

7. I have perused the report under section 173 of the Code of Criminal Procedure, 1973, the statements of eye witnesses Raju Mourya and Dinesh Kanojia and the postmortem report.

8. The autopsy surgeon has opined that the cause of death was "Septicemia following head injury due to hard and blunt impact in an alleged case of assault." Column No. 17 of the postmortem report further indicates that there were three therapeutic external injuries. It is a matter of record that the deceased succumbed to the injuries after more than a month of the alleged assault.

9. In this backdrop if the statements of eye witnesses Raju Mourya and Dinesh Kanojia are perused, it becomes evident that the allegations are prima facie omnibus in the sense that all the assailants assaulted the deceased by means of fist and kick blows and stone. The aforesaid being the nature of the statements of the alleged eye witnesses, the aspect as to which of the accused was armed with paverblock and gave blows and whether the rest of the assailants shared common intention to cause death of the deceased

or such injury as was sufficient to cause death will merit adjudication at the trial. Prima facie, it does not appear that that there were multiple injuries on the person of the deceased. Whether the head injury was the cause of septicemia or it developed due to another cause would also be a matter for adjudication at the trial.

10. In the aforesaid view of the matter and especially having regard to the fact that the applicant has been in custody for more than four years, I am inclined to exercise discretion in favour of the applicant. The apprehension on the part of the prosecution based on the antecedents of the applicant, can be taken care of by imposing stringent conditions.

Hence, the following order.

ORDER

- 1] The application stands allowed.
- 2] The applicant Sarvanan T. Nadar be released on bail in C.R. No.128 of 2020 registered with Dharavi 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 Dharavi police station on the first Monday of every month between 11 am to 1 pm for a period of three years or till conclusion of the trial, whichever is earlier.

4] Except for the purpose of attending police station, the applicant shall not enter the limits of Dharavi 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.

Application disposed.

(N. J. JAMADAR, J.)