



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3431 OF 2023**

Samir Kiran Rajput @ Sam

... Applicant

versus

The State of Maharashtra

... Respondent

Mr. Dilip Shinde with Mr. M.C.Kumbhar, for Applicant.

Mr. S.R.Agarkar, APP for State.

CORAM: N.J.JAMADAR, J.

DATE : 28 MARCH 2024

P.C.

1. Heard the learned Counsel for the parties.
2. The applicant who is arraigned in C.R.No.83 of 2023 registered with Pant Nagar Police Station for the offences punishable under Sections 302, 307 read with Section 34 of the Indian Penal Code and Sections 37(1) read with 135 of the Maharashtra Police Act, 1951 has preferred this application to enlarge him on bail.
3. Rupesh (deceased), was the husband of the first informant. They were residing at Indira Chawl, D.B.Pawar Chowk, Ramabai Ambedkar Nagar, Ghatkopar (E), Mumbai. On 24 January 2023 at about 9.30 p.m. to 10.00 p.m., the applicant and co-accused who are also the residents of the same locality were sitting around a bonfire. The deceased and his friends Kishor and Padya were consuming liquor nearby. Padya allegedly disturbed the bonfire. An altercation ensued between two groups. The deceased allegedly assaulted Aniket (A1). Padya dragged Anand (A2) and

banged his head on the wall of the house. In the scuffle that had ensued, the applicant allegedly gave a blow by means of a wooden log on the head of the deceased. On being apprised that the deceased was lying at the said spot, the first informant and her relatives rushed to the scene of occurrence. The deceased was bleeding from his nose and mouth. He had sustained an injury on the head. He was shifted to Rajawadi hospital. However, he succumbed to the injuries.

4. Mr. Shinde, learned Counsel for the Applicant, submitted that the members of the other group had initially assaulted the applicant and his friend. The incident had occurred in the spur of moment. The applicant is a 20 year old boy. In the circumstances, it cannot be said that the applicant had an intention to cause death of the deceased.

5. Mr. Aagarkar, learned APP resisted the prayer for bail. Mr. Aagarkar submitted that the quarrel arose over a trivial matter. There was no such grave provocation as to cause a fatal injury by means of a deadly weapon on the head of the deceased. Taking the court through the statements of witnesses which indicate that the applicant had assaulted the deceased by means of wooden log and the disclosure statement made by the accused, pursuant to which the said wooden log came to be recovered, Mr. Aagarkar submitted that the applicant does not deserve to be enlarged on bail.

6. From the perusal of the statements of Rohan Jadhav, Prathamesh Nikam

and Kishor Shinde, the alleged eye-witnesses to the occurrence, it becomes prima facie evident that two groups were sitting near Shankar Temple. One group had lit a bonfire. Other group, comprising the deceased, was having drinks. An altercation ensued between the members of two groups over sharing the space. One of the members of the deceased's group disturbed the bonfire. Fisticuffs ensued. It seems, in the course of the fight, the applicant allegedly picked up a wooden log from the bonfire and assaulted the deceased.

7. There is prima facie material to indicate that initial assault was mounted by the deceased on Aniket (A1). Padya, who was the member of the deceased's group, allegedly assaulted Anand (A2). It is also pertinent to note that there is an inconsistency in the statements of the eye witnesses as to the manner in which the weapon of offences came in the hand of the applicant. Rohan Jadhav stated that Padya had thrown a stick on the person of the applicant and the co-accused, and, thereafter, the applicant assaulted the deceased by the very same wooden log. Kishor Shinde stated that the applicant had picked up a wooden log from the bonfire and assaulted the deceased.

8. In either case, evidently, the applicant was not initially armed. Prima facie, there was no pre-mediation. The incident occurred in the spur of the moment. Prima facie, it appears that the group, of which the deceased was a member, was the aggressor. The applicant had allegedly picked up a wooden log lying thereat. I have

also perused the memorandum of the disclosure statement. It indicates that pursuant to the discovery made by the applicant, a wooden batten having length of 2.6 inches and width of 4 inches was recovered.

9. In the circumstances, whether the applicant had the intention to cause death or such bodily injury as was sufficient in the ordinary course to cause death, would be a matter for adjudication at the trial. Since a single blow was allegedly given, whether the offence would fall within the ambit of Section 302 or 304 of IPC would also be a matter for trial.

10. The applicant is a 20 year old boy. Investigation is complete and the chargesheet has been lodged. Further detention of the applicant, in the circumstances of the case, does not seem warranted. I am, therefore, inclined to release the applicant on bail.

11. Hence, the following order :

ORDER

(i) The Application stands allowed.

(ii) The Applicant – Samir Kiran Rajput @ Sam be released on bail in C.R.No.83 of 2023 registered with Panta 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 Panta Nagar Police Station for

a period of three years or till the conclusion of the trial, whichever is earlier, except for marking his presence before Panta Nagar Police Station on first Monday of every alternate month in 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.)

SSP

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