

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3535 OF 2023

VISHAL
SUBHASH
PAREKAR

Digitally signed by
VISHAL SUBHASH
PAREKAR
Date: 2024.01.10
13:03:12 +0530

Avinash Ashok Torane

...Applicant

vs.

The State of Maharashtra

...Respondent

Mr. Prashant Pandey a/w. Mr. Ashok Dhanuka, Mr. Dinesh Jadhvani and Mr. Irfan Unwala i/b. W3Legal LLP, for the Applicant.
Mr. Y.M. Nakhwa, APP, for the Respondent/State.

CORAM : N. J. JAMADAR, J.

DATE : JANUARY 08, 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. 588 of 2022 registered with Bhandup police station for the offences punishable under sections 302, 326, 325 and 323 read with 34 of Indian Penal Code, 1860 has preferred this application to enlarge him on bail.

3. Suraj (the deceased) was the son of the first informant. The applicant was the friend of the deceased. The later used to visit the house of the applicant frequently. On 26th September, 2022 Suraj was admitted in Mulund General Hospital. Vikas, the brother of the first informant had visited Mulund General Hospital. Suraj had then narrated that he had relationship outside marriage with the wife of the applicant. On 26th September, 2022 the applicant and the co-accused Ashwin Torne and Rupesh Bhise had called him near

Buddh Vihar, Kamble Compound, Pratap Nagar, Bhandup (w), Mumbai and assaulted him by means of wooden bamboo, belt and fist and kick blows. After discharge Suraj went to his native place at Kapade (Bu), Tal. Poladpur, Dist. Raigad. Condition of Suraj deteriorated. Eventually, Suraj passed away on 4th October, 2022.

4. The learned counsel for the applicant submitted that the alleged incident of assault had occurred on 26th September, 2022. He was discharged on the very next day. No report was lodged in respect of the alleged occurrence. After the death of the deceased, the applicant has been roped in.

5. The learned counsel for the applicant further submitted that the co-accused Ashwin Torne and Rupesh Bhise who are similarly situated have been granted bail by the Court of Session. The role attributed to the applicant and the co-accused is almost identical. Therefore, the applicant is also entitled to same dispensation.

6. The learned APP resisted the prayer for bail. It was submitted that there were numerous injuries on the person of the deceased as noted in the column 17 of the postmortem report. The applicant had a strong motive to kill the deceased as the deceased allegedly had a relationship outside marriage with the wife of the applicant. That distinguishes the case of the applicant from the co-accused who have been released on bail.

7. From the perusal of the allegations in the first information report as well as the material on record, it becomes prima facie evident that the gravamen of indictment against the applicant as well as the co-accused is that on 26th September, 2022 at about 11 am they had assaulted the deceased by means of wooden stick, belt and fist and kick blows. It further appears that the deceased was admitted in the hospital. X-ray and sonography tests were done at Sion Hospital and thereafter he was discharged. The injury certificate of the deceased indicates that on 26th September, 2022 four simple and two grievous injuries were found on the person of the deceased with blunt object. In contrast, the postmortem report indicates that there were as many as 28 external injuries on the person of the deceased.

8. At this stage, even if the prosecution case is taken at par and it is assumed that the applicant and the co-accused had assaulted the deceased by means of wooden bamboo and belt yet I find it rather difficult to hold that there is much qualitative difference between the role attributed to the applicant and the co-accused, who are released on bail. The allegations are common in the sense that all the accused had allegedly assaulted the deceased by means of aforesaid weapons. In the circumstances, the applicant also deserve the same dispensation. The question as to whether the

offence would fall within the dragnet of section 302 or section 304 of the Penal Code, would also warrant adjudication at the trial.

9. The applicant has been in custody since 4th October, 2022. It is unlikely that the trial can be completed within a reasonable period. The applicant also appears to have roots in society. The possibility of fleeing away from justice seems to be remote. I am, therefore, impelled to exercise the discretion in favour of the applicant.

Hence, the following order.

ORDER

1] The application is allowed.

2] The applicant Avinash Ashok Torane be released on bail in C.R. No.588 of 2022 registered with Bhandup 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 Bhandup police station on the first Monday of every alternate month in between 11 am to 1 pm till conclusion of the trial.

4] 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.

5] 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.

6] The applicant shall regularly attend the proceedings before the jurisdictional Court.

7] 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.)