



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3554 OF 2023**

Akash Prakash Jadhav

... Applicant

versus

The State of Maharashtra

... Respondent

Mr. Ashish B. Jagtap i/by Mr. Bhanudas L. Jagtap, for Applicant.

Mr. Prashant Jadhav, APP for State.

PSI Sunil Sonawane (Pairavi) Charkop Police Station present.

CORAM: N.J.JAMADAR, J.

DATE : 25 APRIL 2024

P.C.

1. Heard the learned Counsel for the parties.

2. The applicant, who is arraigned in C.R.No.66 of 2023 registered with Charkop Police Station for the offences punishable under Sections 302, 307, 324 read with 34 of the Indian Penal Code and Section 4 read with 25 of the Arms Act, 1959 and Section 135 of the Maharashtra Police Act, 1951 has preferred this application to enlarge him on bail.

3. Manish @ Viraj Yadav (the deceased) was the friend of Vicky Hanumanta Rajaiyya. Rahul Babu Manohar (A1), Akash Prakash Jadhav (A2) – the applicant, Raju Chandrakant Bagul (A3) and Sunil Dinesh Ingale (A4) were also the residents of the same locality. Relations between the deceased and Rahul (A1) were inimical and there were quarrels between them in the past. On 8 February 2023, at about 8.30 to 9.00 p.m., while the first informant, deceased and other friends were

present near Dingeswar Temple, the applicant and the co-accused Rahul (A1), Raju Bagul (A3) and Sunil Ingale (A4) came thereat armed with scythe, iron rod and sticks. The deceased and the first informant tried to flee away. Rahul (A1) exhorted that he will not spare the deceased. Rahul (A1) unleashed blows on the head of the deceased by means of wooden stick. After Rahul (A1) gave the second blow on head, the deceased fell on the ground. Thereafter, Raju Bagul (A3) assaulted the deceased by means of iron rod. The first informant tried to intervene. However, Rahul (A1) and his friends continued to unleash blows by means of wooden stick and fist and kick blows. The deceased succumbed to the injuries.

4. Mr. Ashish Jagtap, learned Counsel for the Applicant, submitted that the role attributed to the applicant is that of assaulting the deceased by means of fist and kick blows. In fact, no specific role has been attributed to the applicant. The witnesses have alleged that apart from the named assailants, there were 15-20 other persons. As the first informant alleges that the relations between the deceased and Rahul (A1) were inimical and the role of assault by means of wooden log is attributed to Rahul (A1), the applicant who has been roped in for being a friend of Rahul (A1), deserves to be enlarged on bail.

5. Mr. Jadhav, learned APP resisted the prayer for bail. Attention of the Court was invited to the statements of the first informant, Kundan V.Salian and Prajakta Rahul Satpute recorded under Section 164 of the Code of Criminal

Procedure. It was submitted that the post-mortem report indicates that the deceased had sustained multiple injuries on the head. Underscalp hematoma present over bilateral fronto temporal region and right parietal and right occipital region. Autopsy Surgeon opined that the cause of death was craniocerebral injury following blunt trauma to head. As the applicant has been specifically named as one of the assailants who assaulted the deceased, the applicant does not deserve to be enlarged on bail.

6. I have perused the report under Section 173 of the Code and the documents annexed with it. Vicky, the first informant was present along with the deceased when the assault was allegedly perpetrated by Rahul (A1) and his associates. In the FIR, Vicky had not attributed the role of assault by means of wooden stick to the applicant. The first informant specifically alleged that Rahul (A1) unleashed blows by means of wooden stick and Raju (A3) by means of iron rod. In the supplementary statement, all the four accused were attributed with the role of assault by means of wooden sticks, scythe and iron rod. Prajakta Rahul Satpute in her statement recorded under Section 161 of the Code, stated that she followed the accused and others who passed from in front of her house armed with weapons while exhorting that they will not spare the deceased on that day. She also attributed the role of assault by means of wooden stick to Rahul (A1). After the deceased fell down, the persons who accompanied Rahul (A1) assaulted the deceased by means of fist and kick blows. When Vicky, the first informant, tried to intervene, Raju (A2) assaulted the first

informant by means of iron rod. Prajakta stated that even after the deceased fell down, the applicant and the co-accused Sunny (A4) continued to assault the deceased by fist and kick blows. In her statement recorded under Section 164 of the Code, Prajakta stated that there were 15 to 20 persons who accompanied the named assailants. The external injuries noted by the Autopsy Surgeon do not prima facie indicate that the deceased was assaulted by means of a sharp weapon.

7. The situation which thus emerges is that though the witnesses have alleged that there were other 15-20 persons apart from the named accused, post completion of investigation, only named accused have been sent for trial for the offences punishable under Sections 302, 307, 324 read with 34 of IPC. It appears that the prosecution has not alleged that the offences were committed in prosecution of the common object of the unlawful assembly. In this backdrop, the fact that the role attributed to the applicant, prima facie, appears to be that of giving fist and kick blows only, deserves to be taken into account.

8. The material on record indicates that Rahul (A1) and Raju (A2) were armed with wooden sticks and iron rod, respectively, and they assaulted the deceased and Vicky by means of their respective weapons. In the backdrop of the inimical nature of the relationship between Rahul (A1) and the deceased, whether the applicant also shared common intention to commit murder of the deceased and/or attempted to commit murder of the first informant, would be a matter for adjudication at the trial.

Thus, having regard to the role attributed to the applicant, I am impelled to exercise discretion in favour of the applicant.

9. Hence, the following order :

ORDER

(i) The Application stands allowed.

(ii) The Applicant – Akash Prakash Jadhav be released on bail in C.R.No.66 of 2023 registered with Charkop Police Station Mumbai 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 mark his presence before Charkop Police Station on first Monday of every 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.)