

Sayali Upasani

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.- 3705 OF 2023

Subhash Bijali Pandey

... Applicant

Vs.

The State of Maharashtra

...Respondent

**SAYALI
DEEPAK
UPASANI**

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Ms. Anjali Chitt with Mr. Amit Singh with Prakash Purohit, for
Applicant.

Ms. Supriya Kak, APP for State/Respondent.

Mr. Suhel Pathan, API, Kashmirira Police Station, Present.

CORAM:- N. J. JAMADAR, J.

DATED:- 26th APRIL, 2024.

PC:-

- 1)** Heard the learned Counsel for the parties.
- 2)** The applicant, who is arraigned in CR No. 412 of 2021 registered with Kashmirira Police Station, for the offences punishable under Sections 302, 307, 504 and 506 read with Section 34 of the Indian Penal Code, 1860, has preferred this application to enlarge him on bail.
- 3)** On 28th May, 2021, Abhishek (the deceased) went to attend the birthday party of a friend. At about 00.30 on 29th May, 2021, a guard from the society came to the house of the first informant and informed

him that somebody assaulted the deceased. When the first informant came down, he found that the deceased had sustained stab injuries. Upon inquiry, the deceased informed him that Subhash Pandey, a watchman of the said building and Ajeet Tiwari, the watchman in the adjoining building, had assaulted him as there was a quarrel a couple of days back over those watchmen not providing drinking water to the deceased.

4) Eventually, the deceased succumbed to the injuries. The applicant came to be arrested. During the course of the investigation, Ajeet Tiwari (A2) made a disclosure leading to the recovery of the knife by means of which he had allegedly assaulted the deceased.

5) The learned Counsel for the applicant submitted that the material on record indicates that the Ajeet Tiwari (A2) had assaulted the deceased by means of a knife. Taking the Court through the allegations in the FIR and the supplementary statement of the first informant as well as the statement of Vikas Mehta, the alleged eye witness to the occurrence, the learned Counsel for the applicant submitted that the role of the applicant is that of having accompanied Ajeet Tiwari (A2), when the quarrel allegedly broke out. Since the weapon of offence has also been recovered at the instance of Ajeet Tiwari (A2), the applicant can not be fastened with the liability for the said recovery of the weapon of offence. Therefore, the applicant deserves to be released on bail.

6) In opposition to this, Mr. Jadhav, the learned APP submitted that the applicant and Ajeet Tiwari (A2) had assaulted the deceased with a deadly weapon in furtherance of their common intention. Since Ajeet Tiwari (A2) was already armed, pre-meditation is evident. Taking the Court through the memorandum of the disclosure statement of Ajeet Tiwari (A2), Mr. Jadhav submitted that there was a clear conspiracy to eliminate the deceased.

7) I have perused the allegations in the FIR, supplementary statement of the eye-witness- Vikas before the police as well as his statement before the Magistrate under Section 164 of the Code of Criminal Procedure, 1973.

8) The prosecution case is that one of the two watchmen had assaulted the deceased by means of a sharp weapon. Panchanama of the CCTV footage (pg. 122) throws light on the incident which had allegedly occurred. It appears that at about 0.24 am an altercation ensued between the deceased, on the one part, and the applicant and the co-accused, on the other part. A scuffle broke out. The co-accused Ajeet Tiwari (A2) is seen assaulting the deceased by means of a weapon. At that time, the applicant is seen proceeding towards the main gate. Thereafter, Ajeet Tiwari (A2) is seen assaulting the deceased after the deceased fell down on the road. At that stage, witness – Vikas comes into the frame and looks around the A- wing gate of the building.

9) It is material to note that Vikas to whom the deceased had disclosed the cause of the injury sustained by him stated that the deceased told him that he was assaulted by a watchman.

10) In the backdrop of the aforesaid nature of the evidence, prima facie, it appears that Ajeet Tiwari (A2) assaulted the deceased by means of a knife. CCTV footage shows that after Ajeet Tiwari (A2) started to unleash blows on the deceased, the applicant proceeded towards the gate.

11) In these circumstances, whether the applicant shared the common intention to cause the death of the deceased, would be a matter for adjudication at the trial. The applicant has been in custody for almost three years. Investigation is complete. At this stage, further detention of the applicant does not seem warranted.

12) I am, therefore, inclined to exercise discretion in favour of the applicant.

13) Hence, the following order.

: ORDER :

(i) The application stands allowed.

(ii) The applicant be released on bail in CR No. 412 of 2021 registered with Kashimira Police Station, for the offences punishable under Sections 302, 307, 504 and 506 read with Section 34 of the Indian Penal Code, 1860, on furnishing a P.R.

Bond in the sum of Rs.30,000/- with one or two sureties in the like amount, to the satisfaction of the learned Sessions Judge.

(iii) The applicant shall mark his presence at Kashmiri Police Station, on the first Monday of every month between 10.00 am to 12.00 noon for a period of two years or till conclusion of trial, whichever is earlier.

(iv) The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to the first informant and any of the persons acquainted with the facts of the case.

(v) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the co-accused and the trial court shall not be influenced by any of the observations made hereinabove.

[N. J. JAMADAR, J.]