

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3759 OF 2023

Nilesh Dinkar Dhoke

...Applicant

vs.

The State of Maharashtra

...Respondent

Mr. Aniket Vagal a/w. Mr. Kunal Pednekar, Mr. Divesh Mehani and
Mr. Savvy Kolhekar, for the Applicant.

Mr. M.G. Patil, APP for the State.

Mr. Sunil Bidkar, PSI, Ambad police station.

CORAM : N. J. JAMADAR, J.

DATE : FEBRUARY 01, 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.230 of 2023
registered with Ambad police station for the offences punishable
under sections 302 and 427 read with 34 of Indian Penal Code,
1860, has preferred this application to enlarge him on bail.

3. Nitin Jadhav (the deceased) was the son of the first
informant. On 8th April, 2023 the first informant was informed by
his daughter that the deceased was admitted in Civil Hospital,
Nashik. The first informant met the deceased. On 9th April, 2023 the
deceased informed him that on 8th April, 2023 at about 11 am he
had gone to Trimurti Chowk, Cidco to return a mobile phone
handset of Pallavi Dhoke (accused No. 4). Thereupon the accused

No. 4, her husband, the applicant herein, and his two associates had assaulted him by means of iron rods alleging that he had called accused No. 4. Eventually, the deceased succumbed to the injuries on 12th April, 2023. The applicant came to be arrested.

4. Mr. Vagal, the learned counsel for the applicant, submitted that the incident had allegedly occurred as the deceased was calling accused No. 4 Pallavi on her mobile phone. Altercation took place at the spur of the moment. There was no pre-meditation. The prosecution witnesses have not attributed any specific role to the applicant. Since the investigation is complete, the applicant be released on bail.

5. The learned APP, resisted the prayer for bail. It was submitted that there are eye witnesses who have consistently stated that the applicant, his wife and the co-accused assaulted the deceased by means of iron rod despite the witnesses trying to rescue the deceased. The weapon of offence has been recovered pursuant to the discovery made by the applicant. Therefore, there is a strong prima facie case against the applicant. Hence, the applicant does not deserve to be released on bail.

6. I have perused the report under section 173 of the Code and the documents annexed with it. From the perusal of the postmortem report, it becomes evident that the deceased died on

account of “spino-vertebral damage with cerebro-pulmonary edema” due to blunt trauma. The autopsy surgeon had noted that there were nine external injuries. Inter alia, there were contusion over back of trunk in midline over neck region and scabbed abrasion over right temporal region and forehead.

7. Prima facie, there is material to indicate that the applicant, his wife and co-accused had assaulted the deceased by means of iron rods and fist and kick blows. There are three eye witnesses who have stated about the assault having been perpetrated by the applicant and the co-accused. The applicant allegedly assaulted the deceased by means of iron rod while loudly questioning the deceased as to why the deceased had called his wife (accused No. 4). The statements of eye witnesses have also been recorded before the learned Magistrate under section 164 of the Code and they have subscribed to prosecution version. The applicant has made discovery leading to recovery of the weapon of assault i.e. iron rod. This circumstance, prima facie, supports the version of the alleged eye witnesses.

8. The submission on behalf of the applicant that the incident had occurred at the spur of the moment, does not merit countenance, at least, at this stage. The postmortem report indicates that there were multiple external injuries on the person of

the deceased. Prima facie, the medical evidence accords with the ocular account of the three alleged eye witnesses.

9. In the aforesaid view of the matter, this does not appear to be a fit case to exercise the discretion in favour of the applicant.

Hence, the following order.

ORDER

1] The application stands rejected.

2] 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.)