

Sayali Upasani

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

BAIL APPLICATION NO. 3761 OF 2023

Nilesh S/o Chagan Nemane

...Applicant

Vs.

State of Maharashtra

...Respondent

Mr. Nitin Sejjal with Mr. Krunal S. Thakkar, for Applicant.

Mr. Tanveer Khan, APP for State-Respondent No. 1.

CORAM:- N. J. JAMADAR, J.

DATED:- 12th MARCH, 2024

PC:-

1) By this application, the applicant-accused No. 6 seeks release on bail in CR No. 271 of 2020, registered with Nandgaon Police Station, Nashik, for the offences punishable under Sections 307, 324, 323, 143, 144, 147, 148, 149 and 452 of the Indian Penal Code, 1860 ("the Penal Code, 1860").

2) Madhuri Borade (the first informant) was in a live-in-relationship with Bhushan Aher (the deceased). They were residing at Ahilyadevi Chowk, Nyaydongri, Taluka Nandgaon, District Nashik. Prior to three years of the occurrence, the

deceased had a dispute with the applicant and his associates over electoral politics and the said dispute cropped up in one form or other, intermittently.

3) On 26th May, 2022, the first informant alleged that while she and the deceased were at home, the applicant and co-accused Vaibav Parkhe, Ramnarayan Jaiswal, Yuvraj Parkhe, Nilesh Nemane, Lakhan Parkhe and other two to three unknown persons barged into their home. The applicant Shailesh and co-accused Vaibhav and Ramnarayan were armed with scythe and co-accused Yuvraj and Nilesh were armed with iron rod and Lakhan had a wooden log. The applicant and co-accused Vaibhav and Ramnarayan allegedly unleashed blows by means of scythe on the head of the deceased. The rest of the accused also assaulted the deceased by the respective weapons with which they were armed. When the first informant tried to intervene and rescue the deceased, co-accused Vaibhav and Lakhan assaulted her by means of wooden log. Co-accused Vaibhav Parakhe and the applicant dragged the deceased in front of the house of Vijay Shinde and all the accused again assaulted the deceased by means of scythe, iron rod and wooden log. The deceased sustained grievous injuries and lost consciousness. He was

shifted to Civil Hospital, Nandgaon and later on to Bapuji Hospital, Chalisgaon. Eventually the deceased succumbed to the injuries.

4) At the outset, the learned Counsel for the applicant submitted that all co-accused have been granted bail by this Court by previous orders. The applicant is entitled to bail on the grounds of parity.

5) The learned APP submits that the claim for parity is well founded. This Court has released the of co-accused, who has also allegedly assaulted the deceased by means of sharp weapons. While releasing Shailesh Nemaane- accused No. 1 on bail, this Court had, *inter alia*, observed as under:-

“...7. Before advertng to the orders passed by this Court in Bail Application No.3104 of 2021 and Bail Application No.4472 of 2021, to evaluate the claim for party, it may be apposite to note the role attributed to the applicant. The first informant alleged that the applicant along with Ramnarayan Jaiswal and Vaibhav Parkhe, who were armed with scythe, unleashed blows on the head of the deceased. The injury certificate of the deceased records that there were in all three CLW's over the skull of the deceased. The Medical Officer opined that the injuries were grievous in nature. The first informant further alleged that the deceased and Vaibhav Parkhe, the co-accused, who is released on bail, dragged the deceased out of their home and thereafter the deceased was assaulted by the applicant and the rest of the accused.

8. In the aforesaid context, while releasing the co-accused Ramnarayan, this Court noted that there was no material to indicate that the injuries sustained by the deceased were life threatening.

9. While releasing Vaibhav Parkhe, it seems that the Court proceeded purely on the premise of parity; since Ramnarayan Jaiswal, against whom identical allegations of assaulting the deceased by means of scythe were made, was released on bail, Vaibhav Parakhe was also ordered to be released on bail.

10. The situation which thus obtains is that two of the co-accused, who were armed with similar weapon and allegedly gave blows by means of those weapons on the head of the deceased have been released on bail. The role attributed to the applicant of dragging the deceased out of home was also attributed to co-accused Vaibhav Parkhe. In the circumstances, so far as the role attributed to the applicant there does not seem any distinctive factor from the one attributed to co-accused Ramnarayan Jaiswal and Vaibhav Parakhe. The claim for parity, thus, appears well-founded.

11. I do not find any justifiable reason to deprive the applicant of the same dispensation....”

6) The role attributed to the applicant is that of assaulting the deceased with an iron rod on the head. As noted above, three injuries were found on the head of the deceased.

7) In the circumstances, the claim for parity becomes justifiable.

8) Hence, the following order.

: O R D E R :

- (i) The applications stand allowed.
- (ii) The applicant be released on bail on furnishing a P.R. Bond in the sum of Rs.25,000/- and one or two sureties in the like amount.
- (iii) The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to any of the prosecution witnesses.
- (iv) The applicant shall not enter into the jurisdiction of Nandgaon Police Station till the charge is framed.
- (v) The applicant shall furnish his residential address, during the aforesaid period, along with contact number to the Investigating Officer and shall intimate change, if any.
- (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 entitlement for bail and they

may not be construed as an expression of opinion on the guilt or otherwise of the applicants and the trial court shall not be influenced by any of the observations made hereinabove.

[N. J. JAMADAR, J.]