

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3804 OF 2023

SANTOSH
SUBHASH
KULKARNI

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Date: 2024.03.08
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Avinash Parshuram Barasakale

...Applicant

Versus

State of Maharashtra

...Respondent

Mr. Rajendra Rathod, a/w Sohail Ahmed, Sameer Shaikh,
Zeeshan Sardar and Dhruv Jain, for the Applicant.
Mr. Bapu Holambe Patil, APP for the State/Respondent.
Mr. Anilkumar Bhosale, Dharavi Police Station, present.

CORAM: N. J. JAMADAR, J.

DATED: 4th MARCH, 2024

ORDER:-

1. Heard the learned Counsel for the parties.
2. The applicant, who is arraigned in CR No. 1001 of 2021 registered with Dharavi Police Station for the offences punishable under sections 302, 307, 323, 504 and 506(ii) read with 34 of Indian Penal Code, 1860 seeks to be enlarged on bail.
3. The indictment against the applicant and the co-accused is that on the night intervening 17th and 18th December, 2021, on account of a quarrel which had taken place at about 11.13 pm on 17th December, 2021, the applicant and the co-accused Prasahnt Kunchikorve and Gautam Dhasal had abused and assaulted the deceased. It is alleged that the applicant had assaulted the deceased by means of cement block. The applicant

had allegedly picked up a cement block lying on the spot, and gave blows on the head and face of the deceased. The co-accused assaulted the deceased by fist blows.

4. At the outset, the learned Counsel for the applicant, invited the attention of the Court to the orders dated 27th January, 2023 in BA/3026/2022, and 4th January, 2024 in BA/3351/2023, whereby co-accused Prashant Kunchikorve and Gautam Dhasal have been released on bail.

5. The learned Counsel for the applicant further submitted that the first informant had initially given a completely different version than the one narrated in the supplementary statement dated 22nd December, 2021. It was further submitted that in the supplementary statement the role of assault by means of stone has been attributed to the co-accused also. Since the co-accused have been released on bail, the applicant also deserves to be enlarged on bail as the role of assault by means of stone cannot be squarely attributed to the applicant alone.

6. The learned APP resisted the prayer for bail. It was submitted that co-accused, who have been released on bail were attributed with minor role of assault by fist and kick blows. The applicant has allegedly assaulted the deceased by means of

stone. Thus, the applicant does not deserve to be enlarged on bail.

7. I have perused the allegations in the FIR as well as the supplementary statement of the first informant. *Prima facie* there is variance in the versions of the first informant in the FIR and the supplementary statement.

8. I have also perused the postmortem report. It indicates that the deceased had sustained one lacerated wound on the left side of the face and one contusion over occipital region. The autopsy surgeon opined that the probable cause of death was head injury. In the supplementary statement, the first informant has attributed the role of assault by means of stone to the applicant as well as another co-accused. The question as to whether the injury on the head, which proved to be fatal, was inflicted by the applicant can only be decided by evidence at the trial.

9. On perusal of the supplementary statement of the first informant, it appears that after the initial quarrel, the members of the informant party had also called their friends and after they arrived at the scene of occurrence, there was another fight. *Prima facie*, it appears to be a case of free fight. The applicant

had allegedly picked up the stone lying at the spot and assaulted the deceased.

10. In the aforesaid view of the matter, I am impelled to hold that a *prima facie* case for grant of bail is made out. The applicant has been in custody since 18th December, 2021. It is unlikely that the trial can be concluded within a reasonable period.

11. Hence, the following order:

: O R D E R :

- (i) Application stands allowed.
- (ii) The applicant be released on bail in CR No. 1001 of 2021 registered with Dharavi Police Station, on furnishing a P.R. Bond of Rs.30,000/- with one or two sureties in the like amount.
- (iii) The applicant shall mark his presence at the Dharavi Police Station on the first Monday of every alternate month between 11.00 am to 1.00 pm till framing of charge.
- (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 stands disposed.

[N. J. JAMADAR, J.]