

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.176 OF 2024
WITH
INTERIM APPLICATION NO.467 OF 2024

Anshu Nanak Pandey	...Applicant
vs.	
The State of Maharashtra	...Respondent

Mr. Vikaskumar Tiwari a/w. Mr. Gopal Singh, for the Applicant.
Mr. Atulkumar Pandey, for the Intervener.
Mrs. Mahalaxmi Ganapathy, APP, for the Respondent/State.

CORAM : N. J. JAMADAR, J.
DATE : JULY 11, 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.1134 of 2022 registered with Samta Nagar police station for the offences punishable under sections 120-B and 302, 141, 143, 144, 147, 148 and 149 read with 34 of Indian Penal Code, 1860; and section 37(1) (3) read with 135 of Maharashtra Police Act, seeks to be enlarged on bail.
3. At the outset, the learned counsel for the applicant submitted that the applicant is entitled to be enlarged on bail on the principle of parity. Attention of the Court was invited to an order dated 29th

January, 2024 passed in BA No. 2871 of 2023 whereby Aaditya Choube was enlarged on bail.

4. The learned counsel for the applicant submitted that the applicant has been roped in on the basis of the images in the CCTV footages and the statements of two police personnel that the applicant is visible in those footages at the scene of occurrence at the time of the alleged assault on the deceased. One of the eye witness though named the applicant as the person who was along with the principal accused Dipak, yet did not name the applicant as one of the persons who assaulted the deceased. Therefore, there is no material to connect the applicant with the alleged offences.

5. While releasing the co-accused Aaditya Choube, this Court had, observed, inter alia, as under:-

3] Dipak Rajbhar was the brother of the first informant Dilipkumar Rajbhar. On the night intervening 24th and 25th July, 2022, Dipak (the deceased) had gone to see off his friend Taufiq to Borivali railway station. He did not return home till the morning of 25th July, 2022. At about 8.00 am the first informant was apprised that the deceased was lying unconscious in a pool of blood near Hanuman Temple, Gaondevi Road, Poisar. The first informant found that there were multiple injuries on the person of the deceased by deadly weapons.

4] The first informant alleged that on 14th July, 2022 there was a quarrel between the first informant, deceased and his friends, on the one part, and Dipak and his associates, on the other part. Cross cases were registered at police station. Co-accused Dipak and his associates including the applicant had vowed to take revenge. The first informant suspected that the

deceased was killed by Dipak and his associates.

5] During the course of investigation, it transpired that images recorded in the CCTV indicated that a number of persons allegedly participated in a murderous assault on the deceased. Two of the police constables namely Mohd Iqbal Shaikh and Amol Kamble identified the persons who had allegedly assaulted the deceased by diverse weapons. The witnesses stated that the 11th person seen in the footages was the applicant Aaditya Choube.

6] The applicant came to be arrested. Clothes which the applicant wore at the time of the alleged occurrence were seized.

7] The learned counsel for the applicant submitted that apart from the aforesaid statement of the police constables, who professed to identify the applicant on the basis of images in the CCTV footages, there is no material to connect the applicant with the alleged offence. The CCTV footages do not indicate that the applicant had participated in the assault in any manner whatsoever. At best, the presence of the applicant is shown.

8] The learned APP resisted the prayer for bail. It was submitted that the applicant was very much present at the time of the alleged occurrence.

9] I have perused the report under section 173 of the Code and the documents annexed with it. The statements of the above named witnesses indicate that after viewing the CCTV footages, they have attributed the roles to the persons, whom they claimed to have known, of assault upon the deceased. The witnesses have simply named the applicant as the person who was seen in the CCTV footage. At this stage, there does not appear any material to prima facie connect the applicant with the alleged offence. The statement of above named witnesses indicate that other persons had also gathered at the place of occurrence and one of the assailants was seen shooing away those persons.

10] In the circumstances, whether the applicant was a member of the alleged unlawful assembly in prosecution of the common object of which the offences were committed, would be a matter for

adjudication at the trial. In the aforesaid view of the matter and the fact that the applicant has been in custody since 26th July, 2022 further detention of the applicant appears to be unwarranted. I am, therefore, inclined to exercise the discretion in favour of the applicant.

6. Ms. Ganapathy, the learned APP fairly submitted that the material arrayed against the applicant is, by and large, the same as was pressed into service against Aaditya Choube. However, Ms. Ganapathy submitted that postmortem report would indicate that the deceased was brutally murdered by a number of assailants as there were as may as 19 injuries on the person of the deceased.

7. Mr. Ashu Pande, learned counsel for the intervener/first informant also resisted the prayer for bail. It was submitted that the applicant has antecedents. He was arraigned in C.R. No. 354 of 2019 for the offences punishable under sections 354-D and 363 of the Penal Code, 1860 and section 12 of the Protection of Children from Sexual Offences Act, 2012. Attention of the Court was invited to an order dated 17th September, 2019 passed in Remand Application No. 305 of 2019 in C.R.No. 354 of 2019 whereby the applicant was released on bail on the condition that the applicant shall not visit the said locality. It was urged that the applicant committed the offences by visiting the said locality in breach of the bail condition. Therefore, the applicant does not deserve to be enlarged on bail.

8. Undoubtedly, the postmortem report indicates that the deceased was killed brutally. There were a number of incised and stab wounds on

the person of the deceased by means of deadly weapon. Yet, while considering the entitlement for bail, the existence of prima facie case against the accused is required to be examined.

9. The material pressed into service against the applicant consists of the statements of two police personnel namely Amol Kamble and Mohd. Shaikh, who identified the alleged assailants on the basis of images in the CCTV footages. It is imperative to note that both witnesses have simply stated that from the images in the CCTV footages, it could be seen that the applicant and one Rajkumar Vishwakarma were also standing at the place of occurrence when the assailants were unleashing the blows. Yogesh Kadam, the alleged eye witness, has also not named the applicant as one of the assailants.

10. The aforesaid being the nature of the material against the applicant, the question as to whether the applicant was a member of the unlawful assembly in prosecution of the common object of which the offences were committed, would be a matter for adjudication at the trial. I do not find there is any qualitative difference between the role attributed to the applicant and Aaditya Choube who has been enlarged on bail.

11. In the backdrop of the nature of the material against the applicant, bearing on his complicity in the instant crime, the antecedents of the applicant, pale in significance. Hence, I am inclined to exercise discretion in favour of the applicant.

Hence, the following order.

ORDER

- 1] The application stands allowed.
- 2] The applicant be released on bail in C.R. No.1134 of 2022 registered with Samta Nagar police station, on furnishing a P.R. Bond of Rs. 30,000/- with one or more sureties in the like amount.
- 3] The applicant shall mark his presence at Samta Nagar police station on the first Monday of every alternate month between 11 am to 1 pm till the conclusion of trial.
- 4] The applicant shall not tamper with the prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses or any person acquainted with the facts of the case.
- 5] 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.
- 6] The applicant shall regularly attend the proceedings before the jurisdictional Court.
- 7] 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 co-accused and the trial Court shall not be influenced by any of the

observations made hereinabove.

Application disposed.

(N. J. JAMADAR, J.)