



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.273 OF 2024**

Abraham Danial Mundrgi @ Anna

... Applicant

versus

State of Maharashtra

... Respondent

Mr. Viral Rathod with Mr. Pankaj Kharate, Mr. Vishwatej Jadhav, Mr. Saurav More
i/by Mr. Pankaj Kharate, for applicant.

Mr. A.A.Naik, APP for State.

CORAM: N.J.JAMADAR, J.

DATE : 9 JULY 2024

P.C.

1. Heard the learned Counsel for the parties.
2. The applicant, who is arraigned in C.R.No.209 of 2023 registered at Kalwa Police Station for an offence punishable under Section 302 read with Section 34 of Indian Penal Code, for having committed murder of Nagesh Kamble (deceased), who was working with the applicant, has preferred this application to enlarge him on bail.
3. The deceased was grazing goats of the applicant. On 12 April 2023, the deceased had returned home early. Enraged, the applicant allegedly assaulted the deceased by fists, and later on took the deceased near Saibaba Nagar, Mafatlal Zopadpatti, Shantinagar, Kalva. The applicant assaulted the deceased by means of belt and stick. The applicant was allegedly accompanied by two unknown associates. They also assaulted the deceased. Eventually, the deceased lost consciousness. On

the morning of 13 April 2023, the deceased was taken to General Hospital, Kalwa, purportedly by the applicant. He was declared dead before admission.

4. Mr. Rathod, learned Counsel for the Applicant, submitted that this Court has released co-accused Anil Maratha on bail. There is not much difference in the role attributed to the applicant and co-accused Anil Maratha. At any rate, according to the learned Counsel for the Applicant, an offence punishable under Section 302 of IPC cannot be said to have been prima facie made out. The applicant allegedly assaulted the deceased by means of a belt. The role of assault by means of stick was attributed to the co-accused who has been released on bail. At best, the applicant can be attributed with an intent to cause hurt, but there was no intent to cause death of the deceased.

5. As against this, learned APP submitted that the applicant mercilessly assaulted the deceased, a 18 year old boy, over a trivial issue. There are statements of eye witnesses who have categorically stated that the applicant took the deceased towards the temple and assaulted the deceased even when the deceased as well as other persons were imploring the applicant not to beat the deceased. In these circumstances, the applicant does not deserve to be enlarged on bail.

6. I have perused the statements of Badal Mohd. Ali Shaikh and Ganesh Bhosale. Mr. Badal has stated that on the night of occurrence, he noticed that a crowd had gathered near Hanuman temple. The applicant and one of his associates were

assaulting the deceased. As persons asked the applicant not to beat the deceased, the applicant and his associates took the deceased towards Saibaba temple. Again cries of the deceased were heard. He went ahead and noticed that the applicant was assaulting the deceased by means of belt and his associates were assaulting the deceased by means of stick. The deceased asked the applicant to take him to hospital. A lady also requested the applicant to take the deceased to hospital. Yet the applicant and co-accused continued to unleash the blows. On the next morning, he found the deceased lying in a motionless state in front of the house of the applicant.

7. Ganesh Bhosale also stated that the applicant and his associates were assaulting the deceased. The applicant was armed with a belt. The deceased was requesting the applicant to take him to the hospital. However, the applicant and his associates undressed the deceased and dumped him on the handcart.

8. Mr. Rathod, learned Counsel for the Applicant, made an endeavour to bank upon the statement of Ms. Savita, daughter of the applicant, to draw home the point that the deceased was in an intoxicated state, he had vomit and passed away.

9. Evidently, the statement of the daughter of the applicant, in a situation of the present nature, does not command precedence over the statements of two eye witnesses, who have categorically stated that the applicant continued to assault the deceased despite the deceased as well as other persons imploring the applicant not to beat the deceased.

10. The cause of death, in the opinion of autopsy Surgeon, was head injury. The PM report indicates that the deceased had sustained multiple abrasions on various parts of the body. A single injury does not, by itself, appear to be fatal. However, the totality of the circumstances cannot be lost sight of. The deceased was a young boy of 18 years. There were multiple injuries on the person of the deceased. There are eye witnesses who have stated that the applicant and the co-accused assaulted the deceased by means of belt and stick. Those weapons of offence were recovered pursuant to the discovery made by the applicant. What exacerbates the situation is the fact that there is material to indicate that despite other persons imploring the applicant not to beat the deceased and take him to the hospital, the applicant continued to beat the deceased and even the omission on the part of the applicant to take the deceased to the hospital, in the backdrop of the fact that the deceased was employed with the applicant points to the *mens rea* on the part of the Applicant, as the deceased was under the parental control of the applicant.

11. As regards the claim for parity with Anil Maratha, the co-accused, it would be suffice to note that there is an element of uncertainty about the identity of Anil Maratha as the person who assaulted the deceased along with the applicant. Therefore, the applicant cannot claim parity.

12. The Court also cannot lose sight of the fact that the prosecution case hinges on the statements of eye witnesses, including the sister of the deceased. In this

backdrop, there is a possibility of tampering with evidence and threatening the witnesses. I am, therefore, not inclined to exercise discretion in favour of the applicant. However, having regard to the nature of the occurrence, I deem it appropriate to direct that the trial be concluded expeditiously.

13. Hence, the following order :

ORDER

(i) The Application stands rejected.

(ii) The trial arising out of C.R.No.209 of 2023 be commenced and concluded as expeditiously as possible.

(iii) 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.)