

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

BAIL APPLICATION NO. 706 OF 2024

SANTOSH
SUBHASH
KULKARNI

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Vishal Chawariya @ Chota Vishal ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Manoj Kumar Tiwari, a/w Pratik M., Sejal Nalawade, for
the Applicant.
Mr. A. A. Shaikh, APP for the State.

CORAM: N. J. JAMADAR, J.
DATED: 2nd JULY, 2024

ORDER:-

1. The applicant, who is arraigned in Sessions Case No.600 of 2022 arising out of C.R. No.130 of 2022 registered with Dadar Railway Police Station, Mumbai, for the offences punishable under Sections 120-B, 302, 324 and 201 read with 34 and Sections 141, 143, 144, 147, 148 and 149 of the Indian Penal Code, 1860 and Sections 4 read with Section 25 of the Indian Arms Act, 1959, has preferred this application to enlarge him on bail.

2. The indictment against the applicant and co-accused is that three days prior to the occurrence, Siddharth Sudhir Nikam alias Siddhu (the deceased) had abused the wife of Sundar Ravnesh Naidu (A1). Thus, Sundar Naidu (A1) had a

grudge against the deceased. The prosecution alleges, Sundar Naidu (A1), Vishal Chawariya alias Chota Vishal (A2), the applicant herein, Himal Singh alias Nepali (A3), Vishal Kakade alias Danny (A4), Ganesh Aavlallu alias Mama (A5) and Kalpesh Dongre (A7) in prosecution of the common object of the unlawful assembly on the night intervening 23rd and 24th February, 2022, committed rioting, accosted the deceased and assaulted him by means of knife, bamboo stick, cement block, tiles and broken beer bottle and thereby committed murder of the deceased.

3. Mr. Tiwari, the learned Counsel for the applicant, submitted that, at best, the role attributed to the applicant is that of keeping a watch when the co-accused Vishal alias Dany (A4), Ganesh (A5) and Sundar (A1) assaulted the deceased and dragged him to the railway tracks. None of the witnesses have alleged that the applicant assaulted the deceased or committed any other overt act. The star witness Rajesh Paswan, who was also allegedly assaulted, belatedly got himself medically examined. He has narrated the history of assault by two persons only. The statement of Selvakumar Raju Pillai, another witness, banked upon by the prosecution is also in the nature of an opinion formed by the said witness

rather than being a witness to the occurrence. It was submitted that the applicant has been in custody since 27th February, 2022. It is unlikely that the trial can be concluded in the near future. Hence, the applicant deserves to be enlarged on bail.

4. Mr. Naik, the learned APP, resisted the prayer for bail. It was submitted that the fact that the applicant was a member of an unlawful assembly in prosecution of the common object of which the deceased was killed, has been stated by two witnesses namely Rajesh Paswan and Selvakumar Raju Pillai. Their statements have also been recorded under Section 164 of the Code of Criminal Procedure, 1973 ("the Code"). Moreover, the trial has commenced. Thus, at this stage, the applicant does not deserve to be enlarged on bail.

5. I have perused the statements of the abovenamed witnesses and the panchnama of CCTV footage. Since Rajesh Paswan is an injured witness, the statement of Rajesh Paswan merits careful consideration.

6. Rajesh Paswan informed that on 24th February, 2022 between 1 to 1.30 a.m. he felt a heavy blow on his head. He had sustained a bleeding injury. Sundar (A1) was standing thereat, alongwith a broken beer bottle. Vishal (A4), Ganesh

(A5), Himat Singh alias Nepali (A3) were also present. They all had encircled the deceased. He got scared, went away and concealed his presence below the bridge. Rajesh Paswan further informed that Vishal (A4), Ganesh (A5) and Sundar (A1) were assaulting the deceased. They dragged the deceased towards the railway tracks. At that time, the applicant had allegedly kept a watch to see that nobody was around. It is imperative to note that Rajesh Paswan has categorically stated that Vishal (A4) was assaulting the deceased by means of a bamboo stick, Ganesh (A4) by means of stone and Sundar (A1) was armed with a knife and the latter assaulted the deceased by means of the said knife.

7. The statement of Selvakumar Raju Pillai *prima facie* does not advance the cause of the prosecution to show that the applicant was either a member of the unlawful assembly or participated in the assault on the deceased. I find substance in the submission of Mr. Tiwari that the said witness has hazarded a guess that the deceased might have been killed by the named persons including the applicant.

8. The panchnama of CCTV footage indicates that after the occurrence, five assailants were seen proceeding away on two motorcycles. However, the images were not clear.

9. The learned APP attempted to bank on the statement of Pratham Goswami to draw home the point that he had overheard the applicant and co-accused planning to beat the deceased. It was submitted that this constitutes an extra-judicial confession. I find it rather difficult to accede to this submission.

10. *Prima facie* the aforesaid material on record indicates that the role attributed to the applicant is that of keeping a watch, while the co-accused allegedly assaulted the deceased. It is pertinent to note that witness Rajesh Paswan has stated that three of the co-accused allegedly dragged the deceased to the railway tracks and, thereafter, he was assaulted by specific weapons. In this backdrop, whether the applicant also shared the common object to commit the murder of the deceased or knew that the said offence was likely to be committed in prosecution of the common object of the unlawful assembly would be a matter for adjudication at the trial.

11. Having regard to the nature of the accusation, the number of accused and the number of witnesses which the prosecution proposes to examine, it is extremely unlikely that the trial can be concluded within a reasonable period. I am,

therefore, inclined to exercise discretion in favour of the applicant.

12. Hence the following order:

: O R D E R :

- (i) Application stands allowed.
- (ii) The applicant be released on bail in Sessions Case No.600 of 2022 arising out of C.R. No.130 of 2022 registered with Dadar Railway Police Station, Mumbai, on furnishing a P.R. Bond of Rs.50,000/- with one or two sureties in the like amount.
- (iii) The applicant shall mark his presence at Dadar Railway Police Station on the first Monday of every alternate month between 10.00 a.m. to 12.00 noon for the period of two years or till conclusion of the trial, whichever is earlier.
- (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 co-accused and the trial Court shall not be influenced by any of the observations made hereinabove.

Application stands disposed.

[N. J. JAMADAR, J.]