

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

BAIL APPLICATION NO. 912 OF 2024

Sushant Digambar Ghotakar	...	Applicant
Versus		
The State of Maharashtra	...	Respondent

Mr. Akash Singh a/w Amit G. Dubey for the Applicant.
Mr. Tanveer Kha, APP for Respondent-State.
PSI - Sachin Tambe, MIDC Police Station, Brihanmumbai.

**CORAM: MANISH PITALE, J.
DATE : 18th JULY 2024**

P.C. :

1. Heard learned counsel for the applicant and learned APP for respondent-State.

2. The applicant arrested on 12th February 2022 in connection with FIR No. 0089 of 2022 dated 12th February 2022 registered at MIDC Police Station, Brihanmumbai, initially for offence under Section 307 of the Indian Penal Code, 1860 (IPC). Subsequently, offences under Sections 302 and 201 of the IPC were also registered. The investigation was completed and charge-sheet have been filed by the Investigating Officer.

3. The allegation against the applicant is that he caused the death of the victim i.e. the brother of the informant by causing serious injuries on vital parts of the body of the victim in the

intervening night of 11th February 2022 and 12th February 2022.

4. The learned counsel for the applicant submits that this is a case of circumstantial evidence, as admittedly there is no eye-witness to the incident. It is submitted that initially the FIR was registered against an unknown person. It is further submitted that there is hardly any material on record to link the applicant to the incident in question, as the allegations are vague and it is alleged that the applicant was having a party with the deceased and other friends. There are no specifics on records, so as to connect the applicant with the incident in question. It is further submitted that the applicant has remained behind bars for about 2 ½ years and that this Court may consider enlarging the applicant on bail.

5. The learned APP, on the other hand, submits that there is sufficient material to link the applicant with the incident in question. It is submitted that although this is a case of circumstantial evidence, there is material on record to show that the applicant was last seen together with the deceased and that he had reached out to one of the witnesses after the incident, admitting to having assaulted the victim. Thereafter, the applicant tried to flee from the place of the incident.

6. This Court has considered the material on record in the light of the rival submissions. There is indeed no eye-witness to the incident. This is a case of circumstantial evidence. In such cases, aspects like the accused being last seen together with the victim,

assume significance. In the present case, two witnesses, being friends of the applicant, have specifically stated that on 11th February 2022 they were with the applicant and the victim. They consumed beer and thereafter, at about 23:45 hours on 11th February 2022, they left the company of the applicant and the deceased. It is significant that one of the two aforesaid witnesses, i.e. Anil stated in his statement that on the next date i.e. 12th February 2022, the applicant had sent voice messages and a photograph to the said witness on WhatsApp. The said witness further stated that in the voice messages, the applicant had narrated the manner in which he had assaulted the victim. The photograph showed the victim in a pool of blood and seriously injured.

7. The learned APP has relied upon transcript of such voice messages. The learned counsel for the applicant submits that forensic report pertaining to the same is yet to be received and that therefore, reliance cannot be placed on the same.

8. Nonetheless, this Court is of the opinion in the light of the statements of the aforesaid two witnesses i.e. Anil and Prem Thapa, there is a *prima facie* case made out against the applicant, indicating that he was last seen together with the victim. This was late in the night of 11th February 2022, while the deceased was found in a severely injured condition on 12th February 2022 and he succumbed to the injuries on the very same day in the hospital.

9. Considering the material available on record, this Court is of the opinion that since a *prima facie* case is made out against the applicant, he is not entitled to be enlarged on bail, particularly since he is facing charges for serious offences under Sections 302 and 301 of the IPC.

10. In view of the above, the application is dismissed.

11. The trial Court is directed to frame charges within eight weeks from today and the trial is expedited.

MANISH PITALE, J.