

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1850 OF 2024

Ratanlal Rajnath Yadav

...Applicant

Versus

The State of Maharashtra

...Respondent

- Mr. Nitin Sejpal (Through V.C.) a/w Ms. Akshata Desai and Mr. Siddharth Gharat, for Applicant.
- Ms. Megha S. Bajoria, APP for Respondent – State.
- Mr. Sudhir Suresh Sathe, PSI, Chitalsar Police Station, Thane.

CORAM : MANISH PITALE, J.

DATE : 22nd August, 2024.

P. C. :

1. Heard Mr. Sejpal, learned counsel for the applicant and Ms. Bajoria, learned APP for the State.

2. The applicant has approached this Court for seeking bail, as he was arrested on 28.03.2018, in connection with First Information Report No. I-65 of 2018, dated 25.03.2018, registered at Police Station Chiitalsar Manpada, District Thane, for offences under Sections 302 and 364 read with Section 34 of the Indian Penal Code (IPC).

3. As per the version of the informant, he saw four persons assaulting the victim with sharp weapon and a broken glass bottle, which resulted in injuries and eventually the death of the victim. The informant happened to be at the place where assault was carried out and he did not know

the assailants. Later, he identified them in Test Identification Parade and that is how the applicant and co-accused persons are linked with the offences in question.

4. At the outset, the learned counsel appearing for the applicant submitted that benefit of parity ought to be given to the applicant as the co-accused Arshad Abdul Hassan Khan was granted bail by order dated 23.04.2024, passed by this Court (*Coram : Bharati Dangre, J.*) in Criminal Bail Application No.96 of 2021. It was submitted that the findings rendered in the said order while granting bail must equally apply to and accrue to the benefit of the applicant herein. It was emphasized that even the present applicant has remained behind bars for more than 6 years, having been arrested on 28.03.2018. It is submitted that there are 26 witnesses to be examined, of whom some witnesses have been examined and after the order dated 23.04.2024 was passed granting bail to the said co-accused person, only 2 witnesses have been examined.

5. The learned APP opposed the bail application, submitting that the role of the present applicant can be distinguished from that of the co-accused Arshad Abdul Hassan Khan, who has been released on bail by this Court. It is submitted that the applicant is the brother of the girl with whom the victim was suspected to be having an affair and therefore, the applicant

had reason and motive for assaulting the victim. It is submitted that the statements of the co-accused persons in the memorandum executed under Section 27 of the Evidence Act, read with other material on record, makes out a case against the applicant. It was submitted that 11 witnesses have been already examined and this Court may expedite the trial, instead of favourably considering the present bail application.

6. It is significant that while granting bail to co-accused person Arshad Abdul Hassan Khan by the order dated 23.04.2024, passed in Criminal Bail Application No.96 of 2021, certain findings have been rendered, which should accrue to the benefit of the accused persons, including the applicant in this application. In paragraph Nos.4 and 5 of the said order, this Court observed as follows :

“4. The complainant participated in the test identification parade to establish the identity of the assailants and on 21/05/2018, he failed to recognize the assailants and he recorded a statement to the effect that since he was scared, he started trembling and could not recognize the accused persons.

Thereafter, another test identification parade was conducted on 18/08/2018, almost 3 months after the incident and this time he identified the applicant.

The learned APP has placed before me the memorandum of the test identification parade.

5. *It is very difficult to believe that the person cannot identify*

the suspects immediately after the incident, but after 3 months he could point out to two of them and considering the earlier statement of the complainant, that he was scared and could not identify the assailants, the test identification parade in my opinion is prima facie doubtful.”

7. The aforesaid findings about the *prima facie* doubtful nature of the test identification parade would accrue to the benefit of the applicant in this application also. Furthermore, it is relevant to note that in the statement of the sister of the applicant i.e. Ms. Chandani, she has specifically named the co-accused Arshad Abdul Hassan Khan, as being present at the place of the incident and having assaulted the victim with Gopal Yadav i.e. another co-accused person, who is the brother of the present applicant. She has stated that after the assault was launched by the co-accused Goyal Yadav and Arshad Abdul Hassan Khan, she was made to sit in an auto rickshaw and she was sent away from the place where the first part of the assault took place. Later, she came to know that the victim had been assaulted brutally and it is in that context that the said witness has taken the name of the applicant. The only witness of the second part of the violent assault, launched on the victim, is the informant himself. But, as noted in the order dated 23.04.2024, passed in Criminal Bail Application No.96 of 2021, in the portion of the order quoted herinabove, it has been found that initially the informant failed to identify the assailants, claiming that he was scared and he was trembling, but after about 3

months in the second round of test identification parade, the informant claimed to have identified the assailants. It is on this basis, that the aforesaid finding has been rendered about the test identification parade being *prima facie* doubtful.

8. Therefore, there is substance in the contention raised on behalf of the applicant that he deserves to be enlarged on bail on the ground parity. The trial has certainly commenced but, it may take its own time to be completed. It is undisputed that the applicant has remained behind bars since 28.03.2018 i.e. for a period of about 6 years and 5 months and this is also a factor to be taken into consideration while disposing of the present bail application.

9. In view of the above, the application is allowed in the following terms :

- (A) The applicant shall be released on bail in C.r. No. I-65 of 2018, registered with Chitalsar Police Station, on furnishing P.R. Bond of ₹ 25,000/- with one or two sureties in the like amount.
- (B) The applicant shall report to the concerned police station on first Monday of every trimester between 03:00 to 05:00 p.m.
- (C) The applicant shall not directly or indirectly make any

inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and should not tamper with evidence.

- (D) The applicant shall attend the proceedings before the Trial Court on every date, except when exempted, for reasons to be recorded in writing.

10. Needless to say, violation of any of the aforesaid conditions may lead to cancellation of the present order.

11. It is also clarified that the observations made in this order are limited to the disposal of the present bail application and the Trial Court shall proceed further in the matter without being influenced by the observations made hereinabove.

12. The application is disposed of.

(MANISH PITALE, J.)