

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

BAIL APPLICATION NO. 2224 OF 2024

Santosh Shivprasad Mishra ...Applicant
Versus
State of Maharashtra ...Respondent

Mr. Akhlak Khan, for the Applicant.
Mr. A. A. Naik, APP for the State.
API Dattatray Pawar, Rabale Police Station, present.

CORAM: N. J. JAMADAR, J.
DATED: 5th AUGUST, 2024

ORDER:-

1. Heard the learned Counsel for the parties.
2. This application for bail is preferred in CR No.140 of 2022 registered with Rabale MIDC Police Station, Mumbai, for the offences punishable under Sections 120B and 302 of the Indian Penal Code, 1860 ("the Penal Code").
3. On the night intervening 8th and 9th May, 2022, there was an altercation between Bhagwan More (the deceased) - the husband of the first informant, on the one part and, the applicant, Krushna Jadhav and Nagnath Jadhav, the accused, on the other part. Bhagwan, the deceased abused the applicant with reference to his native place. Thereupon, the applicant started to assault the deceased. Nagnath also

joined in the assault. The Applicant and co-accused - Nagnath also exhorted that they would kill the deceased. Sanjay Vardhamane and others intervened and the accused left the spot. On the morning of 9th May, 2022, the deceased started wailing. He stated that on the previous night the accused had assaulted him and, therefore, he had stomachache. Eventually the deceased succumbed to the injuries.

4. At the outset, the learned Counsel for the applicant submits that this Court has already released co-accused Krushna Jadhav and Nagnath Jadhav on bail by order dated 24th April, 2024 and 23rd July, 2024, respectively. The applicant is similarly circumstanced and is entitled to bail on the ground of parity.

5. The learned APP fairly submits that the principle of parity may apply.

6. While releasing the co-accused Krushna Jadhav, this Court has observed *inter alia* as under:

6. I have perused the report under Section 173 of the Code of Criminal Procedure, 1973 and the documents annexed with it. Mahesh More, a cousin of the deceased, has narrated the sequence of the occurrence. It appears that the applicant, co-accused and deceased had consumed liquor. An altercation ensued over the deceased abusing co-accused – Santosh, with reference to his

native place. Thereupon, the applicant and the co-accused allegedly assaulted the deceased.

7. Evidently, none of the accused was armed with any weapon. The applicant and the co-accused allegedly assaulted the deceased by means of fist and kick blows. After the assailants fled away from the spot, the deceased was lying thereat. On the next morning, the deceased went to the room of one Mahesh. Sujata claimed to have met the deceased thereat on the morning of 9th May, 2022. At that time, the deceased had informed her that the applicant and the co-accused had assaulted him on the previous night and, therefore, he was suffering from a stomachache.

8. The PM report indicates that there were multiple abrasions on the person of the deceased. The Autopsy Surgeon opined that the cause of death was Hemorrhage and shock due to blunt abdominal trauma. In a situation of this nature, whether the intent of the applicant was to cause the death of the deceased or such bodily injury as was sufficient in the ordinary course of nature to cause the death would be a matter for adjudication at the trial. The applicant and the co-accused allegedly assaulted the deceased in a drunken state. Whether the applicant shared the intention to cause the death of the deceased, would also be a matter of evidence.

9. In any event, the question as to whether the offence would fall within the dragnet of Section 302 or Section 304 of the Indian Penal Code, 1860, would arise for adjudication. The investigation is complete. The applicant has been in custody for almost two years. Further detention of the applicant does not seem to be warranted.”

7. The aforesaid reasons which weighed with this Court in releasing Krushna Jadhav on bail, govern the case of the Applicant with equal force. *Prima facie*, there is no qualitative distinction in the role attributed to the Applicant and Krushna Jadhav. The Applicant is, thus, entitled to claim parity. I am, therefore, inclined to allow the application.

8. Hence, the following order:-

: ORDER :

- (i) Application stands allowed.
- (ii) The applicant be released on bail in CR No.140 of 2022 registered with Rabale MIDC Police Station, Mumbai, on furnishing a P. R. Bond in the sum of Rs.30,000/- with one or two sureties in the like amount, to the satisfaction of the learned trial court.
- (iii) The applicant shall mark his presence at Rabale MIDC Police Station, Mumbai, on the first Monday of every month between 10.00 am to 12.00 noon for a period of two years or till conclusion of trial, whichever is earlier.
- (iv) The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to the first informant and any of the persons acquainted with the facts of the case.
- (v) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of 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.

[N. J. JAMADAR, J.]