

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

BAIL APPLICATION NO. 2442 OF 2024

Ahmed Abdul Kadir Ansari ...Applicant

Versus

The State of Maharashtra ...Respondent

WITH

BAIL APPLICATION NO. 241 OF 2024

Jainul Abdul Kadir Ansari ...Applicant

Versus

State of Maharashtra ...Respondent

Mr. Ankush Dhokale, for the Applicant in BA/2442/2024.

Ms. Afreen Shaikh, for the Applicant in BA/241/2024.

Smt. Mahalaxmi Ganapathy, APP for the State.

CORAM: N. J. JAMADAR, J.

DATED : 4th OCTOBER, 2024

ORDER:-

1. Heard the learned Counsel for the parties.
2. The applicants, who are arraigned in CR No.522 of 2021, registered with Mankhurd Police Station, for the offences punishable under Sections 302 and 323 read with Section 34 of the Indian Penal Code, 1860 and Sections 37(1) read with Section 135 of the Maharashtra Police Act, 1951, have preferred these applications to enlarge them on bail.
3. Mohd. Hussain, the younger son of the first informant, had been to the mobile repair shop of Jainul Ansari (A1 - the

applicant in BA/241/2024). An altercation ensued with Ahmed Ansari (A2); (the applicant in BA/2442/2024), the brother of Jainul (A1), over replacing the display of the mobile phone handset. Jainul (A1) and Ahmed (A2) allegedly assaulted the Mohd. Hussain. The latter called the first informant. While the first informant was trying to defuse the situation and resolve the quarrel, her elder son Akbar (the deceased) came thereat on Activa Scooter.

4. As the deceased questioned Jainul (A1) and Ahmed (A2) as to why Mohd. Hussain was assaulted, an altercation and fisticuffs ensued between the deceased and Jainul (A1). The latter allegedly picked up an iron rod and gave a blow on the chest of the deceased. While the deceased was trying to escape from the clutches of the accused by the Activa Scooter, Sarfraj (A3) and Irshad Hussain (A4) friends of Jainul (A1), accosted him. Irshad Hussain (A4) allegedly removed the key of the Scooter. Thereafter, applicant Ahmed (A2) gave a blow by means of knife on the thigh of the deceased. There was profuse bleeding and eventually the deceased succumbed to those injuries.

5. Mr. Ankush Dhokale, the learned Counsel for Ahmed (A2) the applicant in BA/2442/2024, submitted that the incident

had occurred at the spur of the moment. Initial altercation was between the applicant and Mohd. Hussain. There was no premeditation. The applicant had allegedly given only one blow on the thigh. At any rate, the intention to cause the death cannot be attributed to the applicant. The applicant is a young boy and has been in custody since three years.

6. Ms. Afreen Shaikh, the learned Counsel for Jainul (A1) the applicant in BA/241/2024, reiterated the submission that the incident had occurred at the spur of moment and without any premeditation. The presence of the deceased at the time and place of occurrence was a matter of chance. Ms. Shaikh further submitted that though the prosecution has alleged that the applicant had picked up a hot barbeque rod and assaulted the deceased, yet the injuries noted by the Autopsy Surgeon bely the said version as no burn or scalding mark was found on the person of the deceased. Inviting the attention of the Court to the postmortem report which indicates that the cause of death was 'shock and hemorrhage due to injury to left femoral vessels', Ms. Shaikh would urge that the said injury is not attributable to the applicant. Therefore, the applicant, who has been in custody since more than three years, deserves to be enlarged on bail.

7. Smt. Ganapathy, the learned APP, stoutly resisted the prayer for bail. Smt. Ganapathy submitted that the complicity of the applicants is borne out by the statements of the eye witnesses. Over a trivial issue, the accused brutally assaulted the deceased. The injuries caused by both the applicants were sufficient to cause the death in the ordinary course of nature. Therefore, the applicants cannot be permitted to draw mileage from the fact that the cause of death was shock and hemorrhage due to injury to left femoral vessels. It was submitted that the weapons by means of which the applicants assaulted the deceased clearly manifest the intent with which the applicants perpetrated the assault. It was further submitted that pursuant to the discovery made by the applicants the weapons of offence have been recovered. Since there is a very strong *prima facie* case against the applicants, they do not deserve to be enlarged on bail.

8. I have perused the report under Section 173 of the Code, especially, the statements of the first informant Mohd. Hussain, Ashraf Kureshi and Asif Ahmed Shaikh. Evidently, the quarrel took place over a trivial issue. The deceased was not a party to the initial altercation. The deceased came in the frame after the first informant reached the mobile shop of Jainul (A1). After the

deceased questioned Jainul (A1) and Ahmed (A2), it seems, the quarrel escalated and both the applicants allegedly assaulted the deceased.

9. *Prima facie*, the witnesses have stated that Jainul (A1) assaulted the deceased by means of barbeque rod and, after the deceased attempted to escape from the clutches of the accused, Ahmed (A2) gave a blow by means of a knife on the thigh of the deceased. The injuries noted by the Autopsy Surgeon lend *prima facie* support to the ocular account of the witnesses. At this stage, the fact that there was no burn or scalding mark on the person of the deceased does not detract materially from the prosecution version. *Prima facie*, there is material to indicate that the deceased met homicidal death.

10. The submission on behalf of the applicants that the incident was not premeditated, however, carries some substance. As noted above, the initial altercation was between the applicant Mohd. Hussain, the brother of the deceased. Even Jainul (A1) allegedly picked up a barbeque rod from the adjoining food stall. It is not the case that any of the applicants was already armed or mounted the assault after preparation.

11. The Postmortem Report indicates that the cause of death was, 'shock and hemorrhage due to injury to left femoral vessels'.

As noted above, Ahmed (A2) gave a single blow by means of knife on the thigh of the deceased. *Prima facie*, the primary cause of death of the deceased was that, on account of the knife blow, the femoral vessels were cut.

12. In the backdrop of the aforesaid nature of the medical evidence, the submission on behalf of the applicants that the offence may not fall within the dragnet of Section 302 of the Penal Code is required to be appreciated. As a single knife blow on a part of the body, which cannot be said to be vital, was inflicted, the pivotal question that would warrant adjudication at the trial would be, whether the offence would fall within the tentacles of Section 302 or 304 of the Penal Code.

13. Mr. Dhokale, the learned Counsel for Ahmed (A2), placed reliance on an order passed by a learned Single Judge of this Court in the case of *Sk. Zuber s/o Sk. Dastagir vs. State of Maharashtra*¹, wherein in a somewhat similar fact-situation, this Court was persuaded to enlarge the accused on bail. The observations in paragraph 5 read as under:

“5. In case at hand, solitary blow was given by the applicant to the deceased at his left thigh-non-vital part which has caused cut of femoral vessel. By any stretch of imagination, one cannot say that the applicant knew the location of femoral vessel and its fatal result on its cut. As per prosecution case, other four accused had caught hold the victim, meaning thereby, victim was made defenseless still the applicant gave a single blow that too on thigh instead of other vital parts of the

1 Cri. Application (BA) No.395/2021.

body which is factor to be weighed in favour of the applicant. Concededly while dealing with the bail application, the Court is not expected to martial material nor to express decisive opinion about the occurrence. However, it is open to form prima facie view if the facts are Order 20 BA 395 apparent and clear. In the above circumstances, on prima facie basis intention to kill cannot be gathered. The investigation is complete and charge-sheet has been filed. The applicant is young body aged 23 years. Trial will take considerable time for its disposal.”

14. In the case of *Harjinder Singh vs. Delhi Administration*², the accused therein had inflicted an injury on the upper portion of left thigh of the deceased. In that context, it was held that it cannot be said with any definiteness that the accused aimed the blow at the particular part of the thigh knowing that it would cut the artery. It was, therefore, not possible to apply Clause 3 of Section 300 to the act of the accused.

15. In the case of *Gokul Parashram Patil vs. State of Maharashtra*³, wherein a single knife blow was inflicted above left clavicle cutting superior venacava, the Supreme Court observed as under:

“4. The solitary blow given by the appellant to the deceased was on the left clavicle - a non-vital part - and it would be too much to say that the appellant knew that the superior venacava would be cut as a result of that wound. Even a medical man perhaps may not have been able to judge the location of the superior venacava with any precision of that type. The fact that the venacava was cut must, therefore, be ascribed to a non- intentional or accidental circumstance. This was precisely the view taken in *Harjinder Singh v. Delhi Administration*, by Sikri, J., and in *Laxman Kalu Nikalje v. The State of Maharashtra*, by Hidayatullah, C.J. In the former

2 AIR 1968 Supreme Court 867.

3 (1981) 3 Supreme Court Cases 331.

of these cases, the injury in question was a stab wound on the left thigh which had cut the femoral artery and vessels. In the latter, the damage caused consisted of a cut in the auxiliary artery and veins. In each of the two cases it was held that although the injury which was found to be sufficient in the ordinary course of nature to cause death had resulted from a blow with a sharp-edged weapon, the same could not be said to have been intended, that the only injury which could be regarded as intentional was the superficial wound resulting directly from the blow, that the assailant could not be held guilty of an offence under section 302 of the Code and that he was, on the other hand, guilty of a lesser offence falling under part II of section 304 thereof."

16. In view of the aforesaid position in law, the aspect of complicity of the applicant for the offence punishable under Section 302 of the Penal Code appears to be a matter for adjudication at the trial. To add to this, it appears that the incident had occurred at the spur of the moment and there was no premeditation.

17. Investigation is complete. The applicants are in custody since more than three years. It is extremely unlikely that the trial can be concluded within a reasonable period. I am, therefore, inclined to exercise the discretion in favour of the applicants.

18. Hence, the following order:

: O R D E R :

- (i) Applications stand allowed.
- (ii) Ahmed Abdul Kadir Ansari, the applicant in BA/2442/2024 and Jainul Abdul Kadir Ansari, the

applicant in BA/241/2024, be released on bail in CR No.522 of 2021, registered with Mankhurd Police Station, on furnishing a P.R. Bond in the sum of Rs.50,000/- with one or two sureties in the like amount, each, to the satisfaction of the learned Sessions Judge.

- (iii) The applicants shall mark their presence at Mankhurd Police Station on the first Monday of every alternate month between 11.00 a.m. to 1.00 p.m. for a period of two years or till conclusion of trial, whichever is earlier.
- (iv) The applicants shall not enter the limits of Mankhurd Police Station for a period of three years or till the conclusion of the trial, whichever is earlier, except for attending the police station on the scheduled dates.
- (v) The applicants 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, so as to dissuade him from disclosing the facts to the Court or any police officer.
- (vi) On being released on bail, the applicants shall furnish their contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.

(vii) The applicants shall regularly attend the proceedings before the jurisdictional Court.

(viii) 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 co-accused and the trial court shall not be influenced by any of observations made hereinabove.

Applications disposed.

[N. J. JAMADAR, J.]