

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 2886 OF 2024

(This order is corrected as per speaking to the minutes of the order dated 26.08.2024)
Junaid Mukhtar Shaikh ...Applicant

Versus

The State of Maharashtra ...Respondent

- Mr. Rajendra J. Rathod a/w Ms. Shabana Shah Rathod and Mr. Sohail Ahmed, for Applicant.
- Mr. Kiran C. Shinde, APP for Respondent.
- Mr. Dayanand I. Sharnarhi, PSI, RAK. Marg Police Station

CORAM : MANISH PITALE, J.

DATE : 02nd August, 2024.

P. C. :

1. Heard, Mr. Rajendra Rathod, learned counsel for the applicant and Mr. kiran Shinde, learned APP for the respondent – State.
2. The applicant was arrested on 21st March, 2024, in connection with First Information Report No.0134 of 2024 (FIR), registered on the said date at Police Station RAK Marg, Mumbai, for the offence under Sections. 307, 504, 506, 143, 147, 148 and 149 of the Indian Penal Code (IPC). Subsequently the victim dies and hence, offence under Section 302 of the IPC was added.
3. The applicant has remained behind bars since 21st March, 2024.
4. The learned counsel for the applicant has referred to the

statement of the informant and statements of other witnesses on record to contend that other than taking the name of the applicant along with other co-accused persons, there is no overt act attributed to the applicant and there is not even an allegation that he was armed with any weapon.

5. It is submitted that two witnesses, who could be said to be independent witnesses have not named the applicant and they have specifically taken the name of two co-accused persons.

6. It was further submitted that the applicant is holding Diploma in Information Technology and he is working as a technician with a company. There are documents placed on record to indicate that on the date and time of the incident, the applicant had logged in and he was actually working from home for his company. On this basis, it is submitted that this Court may allow the present application.

7. On the other hand, learned APP relies upon statements of the witnesses on record to submit that the presence of the applicant is very much established. It is submitted that since this case concerns an unlawful assembly of the accused persons, the presence of the applicant is enough to implicate him for the death of the victim.

8. Having heard the learned counsel for the applicant and the

learned APP, this Court is inclined to allow the present application for the following reasons :

(a) The statement of the informant does name the applicant along with other accused persons. But, other than taking the name of the applicant, no overt act is attributed to him. It is not even alleged that the applicant was armed with any weapon. The statements of the other eye witnesses who are related to the victim have also taken only the name of the applicant, as one of the persons present at the time of the incident.

(b) There are two persons who claim to be eye witnesses and who could be said to be independent witnesses and both these witnesses have not even named the applicant as the person present at the time of the incident. In such cases, where violence is inflicted in the neighborhood, it is quite possible that there would be persons other than the accused persons present at the spot of the incident who have no involvement in the incident in question, but their presence gets recorded in the statements of witnesses and the informant. Therefore, an overt act being attributed or accused being armed with weapon at the time of the incident become significant factor.

(c) The applicant has no criminal antecedents and he at the time of the incident was working with a private company as he is holding diploma in Information Technology. At this stage, this Court is not inclined to go into the documents, indicating the claim of the applicant that he had logged in for

working from home, but such material can be said to be ancillary material, which supports the claim of the applicant of not being involved in the incident in question.

9. In view of the above, the application is allowing on the following terms :

- (A) The applicant is granted bail in connection with FIR No.0134 of 2024 (FIR), registered on the said date at Police Station RAK Marg, Mumbai, for the offence under Sections 302, 307, 504, 506, 143, 147, 148 and 149 of the Indian Penal Code, he shall be released on bail on furnishing P.R. Bond of ₹ 25,000/- and one or two sureties in the like amount to the satisfaction of the Trial Court.
- (B) The applicant shall report to the Police Station RAK Marg, Mumbai, on 01st Sunday of every Month, between 10:00 a.m. and 12:00 noon, during the pendency of the trial. He shall cooperate with the investigation.
- (C) The applicant is permitted to furnish cash bail surety in the sum of ₹ 25,000/- for a period of six weeks in lieu of surety.
- (D) The applicant shall not tamper with the evidence in any

manner. He shall not influence the informant, witnesses or any other persons concerned with the case.

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.)