

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2940 OF 2024

Kailas Tukaram Waghat ... Applicant
Vs.
State of Maharashtra ... Respondent

Mr. Stavan Telgote i/b. Mr. Prashant Gurave for Applicant.
Mr. Prasanna P. Malshe, APP for Respondent-State.
Mr. Tukaram V. Mengal, PSI, Aarey Police Station.

CORAM : MANISH PITALE, J.
DATE : SEPTEMBER 02, 2024

P.C. :

. Heard Mr. Telgote, learned counsel for the applicant and Mr.Malshe, learned APP for the respondent-State.

2. By this application, the applicant seeks bail as he was arrested on 26.05.2020 in connection with FIR No.99 of 2020 registered with Aarey Police Station, District - Mumbai, for offences under Sections 302, 201 read with Section 34 of the Indian Penal Code, 1860 (IPC).

3. The FIR was initially registered against unknown persons but the applicant and other accused persons came to be arrested on the basis of a statement and a corresponding video submitted by one of the witnesses to the incident. The material on record shows that a minor person happened to be at the place of the incident and he recorded the incident in his mobile, on the basis of which, the accused persons were said to have been recognized and then arrested.

4. The learned counsel for the applicant submits that in the present case, there cannot be said to be any eyewitness and yet the applicant has

suffered incarceration for more than four years. It is submitted that the statement of the minor person, who claims to have video recorded the incident in his mobile phone is unsafe, it cannot be accepted and in any case there is a statement of a police official dated 09.06.2020, i.e. much after the incident in question, giving an impression that the accused persons were recognized for the first time on the said date. It is further submitted that the CCTV footage also creates doubt about the exact place of the incident, as the statement of one of the witnesses on record indicates that the deceased victim was carried from the place of actual assault to a substantial distance. It is submitted that in such circumstances, considering the fact that the trial would take its own time, this Court may enlarge the applicant on bail.

5. On the other hand, the learned APP submits that the statements of witnesses on record, including the eyewitnesses, clearly implicate the applicant with other accused persons. The video recording is an additional piece of evidence, which would be appropriately relied upon at the stage of trial. Reference is made to statements of the eyewitnesses recorded under Section 164 of the Code of Criminal Procedure, 1973 (Cr.P.C.) to submit that the prosecution has a strong case to ensure the conviction of the accused persons and therefore, this Court may not show any indulgence. It is also brought to the notice of this Court that about 29 eyewitnesses have been cited and during the course of trial, fewer witnesses may be examined.

6. This Court has considered the material on record. The recording of statements of witnesses shows that there are at least two eyewitnesses to the incident, one of whom is said to have recorded the incident in his mobile phone. These eyewitnesses knew the accused and therefore, they have named them in their statements. The description of the incident indicates that when the victim was walking past the place where the

applicant and other accused persons were drinking, the victim appears to have abused the accused persons, which enraged them and they started beating him with sticks, fists and kicks. This description of the incident finds mention in the statements of the two eyewitnesses recorded under Section 164 of the Cr.P.C. The video recording of the incident by one of the eyewitnesses is an additional piece of evidence and the statement of the police official recorded on 09.06.2020 has to be appreciated in the context of the video-recording being stored in a pen-drive and the manner in which it was kept in an envelope in the presence of *panch* witnesses.

7. The material on record *prima facie* makes out a case against the applicant and other accused persons. The alleged discrepancy in the CCTV footage with regard to the exact place of the incident would be a matter for trial and at this stage itself, the applicant cannot claim any benefit on that score.

8. As regards long incarceration of slightly more than four years, suffice it to say that the present case concerns offences under Sections 302, 201 read with Section 34 of the IPC. The maximum punishment for offence under Section 302 of the IPC is death or imprisonment for life. It is also noted that 29 witnesses have been cited in the charge-sheet and that, in practical terms, fewer witnesses will be examined. Therefore, it cannot be said, at this stage itself, that the trial would necessarily be prolonged.

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

(MANISH PITALE, J.)