

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3004 OF 2024

Hanjala Liyakat Khan ... Applicant
Vs.
State of Maharashtra ... Respondent

Mr. Ritesh Thobde a/w. Ms. Zubi Ansari, Ms. Ankita Rai and Mr. Changdev Shingade for Applicant.

Mr. P. P. Malshe, APP for Respondent-State.

Mr. N. S. Landge, PSI, Khadakpada Police Station, Kalyan City.

CORAM : MANISH PITALE, J.
DATE : AUGUST 23, 2024

P.C. :

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

2. The applicant was arrested on 26.09.2023 in connection with FIR No.0410 of 2023 dated 25.09.2024 registered with Khadakpada Police Station, District - Thane, for offence under Section 302 read with Section 34 of the Indian Penal Code, 1860 (IPC).

3. The allegation as per the statement of the informant is that the applicant was riding a motorcycle along with co-accused person, who was the pillion rider. It is alleged that co-accused person got down from the motorcycle and assaulted the victim, who was a truck driver, by means of knife, which caused serious injury to him. The informant, who is also a truck driver, stated that the victim had called him from his mobile and stated that he has been assaulted by means of a knife. The informant ran towards the place of the incident when he saw that the victim was running in an injured condition and he was being pursued by two persons on a motorcycle. Thereafter the victim collapsed, while the

two persons on motorcycle rode away when the informant created hue and cry.

4. The learned counsel for the applicants submits that even if the case of the prosecution is to be taken into consideration, the role attributed to the applicant is that of the person, who was allegedly riding the motorcycle. The allegation of inflicting stab wound on the victim pertains to the co-accused person and not the applicant. It is further submitted that the informant failed to identify the applicant in the test identification parade. Statements of other witnesses including a traffic warden show that even they saw the two persons on the motorcycle going away from the spot of the incident when the victim collapsed due to the injury. It is submitted that in such a situation, there is hardly any material to link the applicant with the incident in question, particularly when the FIR was registered against unknown persons and the informant and others had no means of identifying the assailants. It is submitted that the recovery of the alleged weapon of assault is also not from the applicant and therefore, this Court may consider enlarging the applicant on bail.

5. On the other hand, the learned APP submits that the presence of the applicant is well established on the basis of the material on record. He relies upon CCTV footage and the *panchanama* dated 29.09.2023 executed in that context. He further submits that even if the informant failed to identify the applicant, another witness, who was present at the spot of the incident, did identify the applicant in the test identification parade. It is submitted that since the presence of the applicant is established by the material on record, the applicant does not deserve any indulgence in the present application. He further submits that there is one criminal antecedent of the applicant.

6. This Court is inclined to allow the present application for the

following reasons:-

- a. The informant himself is not an eyewitness to the actual incident of stabbing that is said to have taken place in the present case. He reached the spot when the victim was already assaulted and he was running while the assailants were pursuing him on a motorcycle;
- b. Even according to the investigating authority, the role attributed to the applicant is that of riding the motorcycle and the allegation pertaining to the actual act of stabbing is against the co-accused person, who was the pillion rider;
- c. The weapon of assault has been recovered at the instance of the co-accused person and not the applicant;
- d. The clothes of the applicant had no blood stains;
- e. The informant himself failed to identify the applicant during the test identification parade. The other witnesses, including the traffic warden reached the spot either at the same time when the informant reached there or few moments thereafter;
- f. The assailants were riding on a motorcycle and although two witnesses have identified the applicant, the said aspect would have to be elaborated upon during the course of trial, particularly when the informant himself failed to identify the applicant;
- g. The emphasis placed on the CCTV footage and the *panchanama* executed on 29.09.2023 wherein the informant viewed the CCTV footage and gave statements, appears to be diluted when it is found that the informant himself failed to identify the applicant in the test identification parade conducted thereafter on 13.10.2023;

- h. The applicant has only one criminal antecedent and that too pertaining to alleged offence of theft.

7. The aforesaid material indicates that at present, the role of the applicant could at worst be that of the person, who was riding the motorcycle at the time of the incident. The overt act of causing stab injury to the victim is not even alleged against the applicant. Therefore, this Court is inclined to allow the present application.

8. Accordingly, the application is allowed in the following terms:-

(A) The applicant shall be released on bail in connection with FIR No.0410 of 2023 dated 25.09.2024 registered with Khadakpada Police Station, District - Thane, on furnishing P.R. Bond of Rs.50,000/- [Rupees Fifty Thousand only] with one or two sureties in the like amount to the satisfaction of the trial Court;

(B) The applicant shall cooperate with the trial Court for expeditious trial and he shall attend each and every date, unless exempted for reasons to be recorded in writing;

(C) The applicant shall not tamper with the evidence of the prosecution. He shall not influence the informant, witnesses or any other person concerned with the case;

(D) Upon being released on bail, the applicant shall immediately, and in any case within a week, furnish the details of his active mobile number and residential address to the trial Court and update about the same, if there is any change.

9. Needless to say, violation of any of the aforesaid conditions would make the applicant liable to face proceedings for cancellation of bail. It

is also clarified that the observations made in this order are limited to the question of grant of bail to the applicant in the present application and that the trial Court shall proceed further, without being influenced by the observations made in this order.

10. The bail application stands disposed of accordingly.

(MANISH PITALE, J.)

Minal Parab