



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3251 OF 2024**

Sonu Sachinder Chaudhary @ Damallu	...	Applicant
versus		
The State of Maharashtra	...	Respondent

Mr. Santosh Deshpande, for Applicant.
Mr. H.J.Dedhia, APP for State.
PSI Bajrang Desai, Samta Nagar Police Station, present.

CORAM: N.J.JAMADAR, J.

DATE : 10 OCTOBER 2024

P.C.

1. Heard the learned Counsel for the parties.
2. The applicant, who is arraigned in C.R.No.1134 of 2022 registered with Samta Nagar Police Station for the offences punishable under Sections 120-B, and 302, 141, 143, 144, 147, 148 and 149 read with Section 34 of the Indian Penal Code, 1860 and Section 37(1) (3) read with Section 135 of the Maharashtra Police Act, seeks to be enlarged on bail.
3. Learned Counsel for the Applicant, at the outset, submitted that the applicant is entitled to be enlarged on bail on the ground of parity, as this Court by orders dated 29 January 2024 and 11 July 2024 have already enlarged Aaditya Krishnakumar Choube and Anshu Nanak Pandey, co-accused, respectively, on bail. Like Aaditya, the presence of the applicant at the time of the alleged occurrence, is simply mentioned. No overt act has

been attributed to the applicant. Therefore, the applicant deserves the same dispensation.

4. Learned APP resisted the prayer for bail. It was submitted that the role of the applicant as an assailant came to light in the images captured another CCTV Camera. On 3 February 2024, a panchanama of the CCTV camera no.2 was drawn. The applicant has been seen with the co-accused, and participating in the conspiracy to eliminate the deceased. It was further submitted that pursuant to the discovery made by the applicant, a tile and bamboo stick by means of which the deceased was assaulted have been recovered. Therefore, it cannot be said that the role of the applicant is similar to that of Aaditya.

5. While releasing co-accused Aaditya, this Court has adverted to the prosecution case and the reasons which weighed with this Court to release Aaditya on bail. For the sake of completeness, it may be appropriate to extract the observations in paragraph Nos.3, 9 and 10 in the order dated 29 January 2024, as under :

“3.Deepak Rajbhar was the brother of the first informant Dilipkumar Rajbhar. On the night intervening 24th and 25th July, 2022, Dipak (the deceased) had gone to see off his friend Taufiq to Borivali Railway Station. He did not return home till the morning of 25th July 2022. At about 8.00 am., the first informant was apprised that the deceased was lying unconscious in a pool of blood near Hanuman Temple, Gaondevi Road, Poisar. The first informant found that there

were multiple injuries on the person of the deceased by deadly weapons.

.....

9. I have perused the report under Section 173 of the Code and the documents annexed with it. The statements of the abovenamed witnesses indicate that after viewing the CCTV footages, they have attributed the roles to the persons, whom they claimed to have known, of assault upon the deceased. The witnesses have simply named the applicant as the person who was seen in the CCTV footage. At this stage, there does not appear any material to prima facie connect the applicant with the alleged offence. The statement of abovenamed witnesses indicate that other persons had also gathered at the place of occurrence and one of the assailants was seen shooing away those persons.

10. In the circumstances, whether the applicant was a member of the alleged unlawful assembly in prosecution of the common object of which the offences were committed, would be a matter for adjudication at the trial. In the aforesaid view of the matter and the fact that the applicant has been in custody since 26th July 2022, further detention of the applicant appears to be unwarranted. I am, therefore, inclined to exercise the discretion in favour of the applicant.”

6. From the perusal of the statements of Akbar A. Moiuddin and Amol Kamble, the police personnel who identified the alleged members of the unlawful assembly after viewing the images in the CCTV, prima facie, it appears that there is not much qualitative difference in the role attributed to Aaditya and the applicant. The witnesses do not refer to any overt act visible from the said images attributable to the applicant.

7. The endeavour of the learned APP to bank upon the panchanama drawn on 3 February 2024 does not appear to advance the cause of the prosecution. It is not the case that the said CCTV footages were not available with the investigating agency when the chargesheet was lodged. The incident had occurred on the night intervening 24th and 25th July 2022. The panchanama now sought to be relied upon by the learned APP was drawn on 3 February 2024. Though, at this stage, the Court may not delve into the aspect of delay and veracity of the electronic evidence, thus sought to be relied upon, yet the submission on behalf of the accused that the said Panchanama came to be drawn after this Court ordered release of Aaditya on bail by an order dated 29 January 2024, cannot be brushed aside lightly.

8. At any rate, the aspect as to whether the applicant was a person who had allegedly assaulted the deceased by means of a tile, in the backdrop of the initial statements of the witnesses in which no role of assault was attributed to the applicant, appears debatable. Therefore, there does not seem much qualitative difference between the role attributed to the applicant and Aaditya who has been released on bail.

9. The applicant has been in custody since 26 July 2022. Having regard to the number of accused and the number of witnesses which the prosecution may be required to examine, it is extremely unlikely that the trial can be concluded within a reasonable period. The Court is not informed that the

applicant has antecedents. I am, therefore, persuaded to exercise discretion in favour of the applicant.

10. Hence, the following order :

ORDER

(i) The Application stands allowed.

(ii) The Applicant – Sonu Sachinder Chaudhary @ Damallu be released on bail in C.R.No.1134 of 2022 registered with Samta Nagar Police Station on furnishing a PR bond in the sum of Rs.30,000/- and one or two sureties in the like amount to the satisfaction of the trial Court.

(iii) The applicant shall mark his presence at Samta Nagar Police Station on first Monday of every month between 11 am to 1 pm for a period of three years or till the conclusion of the trial, whichever is earlier.

(iv) The applicant shall not tamper with the prosecution evidence. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any police officer.

(v) On being released on bail, the applicant shall furnish his contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.

(vi) The applicant shall regularly attend the proceedings before the jurisdictional Court.

(vii) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

Application disposed.

(N.J.JAMADAR, J.)