

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3252 OF 2024

Ashok Ramratan Shrivastav

...Applicant

Versus

The State of Maharashtra

...Respondent

- Mr. Rajendra Rathod a/w Mr. Umar Dalvi i/b Ms. Shabana Shah, for Applicant.
- Ms. Megha S. Bajoria, APP for Respondent.
- Mr. Sunil Gomare, PSI, Pairavi Officer, Amboli Police Station, present.

CORAM : MANISH PITALE, J.

DATE : 12th DECEMBER, 2024.

P. C. :

1. Heard learned counsel for the applicant and learned APP for the respondent-State

2. The applicant is seeking bail, as he was arrested on 07th June, 2017, in connection with First Information Report No.191 of 2017, dated 07th June, 2017, registered at Police Station Amboli, Mumbai, for offences under Sections 307, 506(2) of the Indian Penal Code, 1860 (IPC) and Section 39(1) of the Bombay Police Act. Since the victim subsequently died, the offence under Section 302 of the IPC was added.

3. The informant is the wife of the deceased and according to her statement, the applicant who was working as a Peon in the establishment of the deceased confronted the deceased on the date of the incident and started

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quarreling with him on the question of arrears of salary due and payable to the applicant. It is alleged that the quarrel led to a scuffle and eventually the applicant assaulted the deceased by means of a knife on various parts of his body, due to which he was seriously injured.

4. The deceased remained admitted in hospital and thereafter he was discharged but he was in a state of coma. Eventually he died on 25th August, 2020.

5. The learned counsel for the applicant was not aware about the fact that an earlier application bearing Criminal Bail Application No.699 of 2021, was filed by the applicant, which was disposed of by an order dated 28th September, 2021 passed by this Court (Coram: Nitin W. Sambre, J.). The said order was highlighted by the learned APP and it was submitted that the applicant is not entitled to argue on merits.

6. But, having seen the contents of the order dated 28th September, 2021, this Court is of the opinion that the applicant can be heard on merits, for the reason that the said application was dismissed as withdrawn with liberty to the applicant to approach the Court afresh, if charge was not framed within six months from the date of the order. It is a matter of record that initially charge was framed on 02nd December, 2022 and thereafter further charge was framed on 27th December, 2022. As a consequence, the applicant

was indeed entitled to move an application afresh, which he did, but the said application was dismissed by the Sessions Court on 03rd June, 2022.

7. The learned counsel for the applicant submits that the background in which the incident occurred cannot be ignored and it appears that due to non payment of salary, in a fit of rage, the applicant may have undertaken the act attributed to him. It is submitted that the applicant cannot be termed as a dangerous person or a hardened criminal and he having undergone incarceration for more than 7 years and 6 months, this Court may consider enlarging him on bail, subject to conditions that the applicant undertakes to abide by. It is further submitted that the victim actually died after more than 3 years and therefore, the charge of Section 302 of the IPC levelled against the applicant may not be sustainable.

8. On the other hand, the learned APP submits that the applicant has no case on merits, because he reached the place of the incident armed with a knife and cutter, thereby showing premeditation on his part. He cannot claim that the act was undertaken suddenly and under a fit of rage. It was submitted that the victim remained in coma from the date of the incident till his death and therefore, the charge under Section 302 of IPC is fully justified. As regards the stage of the trial, it was submitted that 4 witnesses are already examined, while the charge-sheet shows a list of 22 witnesses and

supplementary charge-sheet shows 4 witnesses, all of whom may not be examined during the course of trial. It is submitted that therefore the trial may be expedited and the application may be dismissed.

9. This Court has considered the rival submissions in the light of the material on record. The statement of the informant itself indicates that at the time of the incident the applicant appears to have used a knife and cutter as weapons of assault. In that sense, there is some substance in the contention of the learned APP that the fact that the applicant reached the place of the spot armed with a knife and cutter, may indicate premeditation on his part.

10. There appear to be eye witnesses, who have corroborated the version of the informant and therefore, the prosecution appears to have made out a *prima facie* case as regards the involvement of the applicant in the incident in question.

11. Nonetheless, this Court cannot ignore the fact that the applicant has no criminal antecedents. He does not appear to be a hardened criminal, who would be a danger to the society. The background of the incident cannot be ignored. In fact, the statement of the informant itself shows that before the actual incident took place, the applicant had been pursuing the deceased for payment of his dues. The tenor of the statement of the informant itself indicates that dues were payable, not only to the applicant but other

employees of the deceased also due to the fact that there had been losses in the business of the deceased. This indicates that the when the applicant met the deceased and the informant on the date of the incident, the demand regarding payment of arrears of salary was not made for the first time but, it appears to have been the culmination of repeated attempts made by the applicant for recovery of his salary. There is also reference to a particular statement made by the deceased, as stated by the informant herself during the course of the quarrel between the applicant and the deceased, which further incensed the applicant. These circumstances cannot be completely ignored only because the applicant appears to have reached the spot carrying knife and cutter in his bag.

12. Apart from this, it is to be noted that the victim actually died more than 3 years after the date of the incident and it would be a matter for evidence as to whether charge under Section 302 of the IPC would be sustainable in the facts and circumstances of this case.

13. It is an admitted position that the applicant has suffered incarceration for more than 7 years and 6 months. Although the charge was framed on 02nd December, 2022 and further charge was framed on 27th December, 2022, more than 2 years down the line, only 4 witnesses have been examined. The list of witnesses show a total of 26 witnesses to be examined

by the prosecution, thereby indicating that the trial may take further time for completion.

14. In such circumstances, the Supreme Court has repeatedly laid down the position of law that in situation where accused under-trials suffer long incarceration and trial is still pending, which may take time for completion, the Constitutional Courts should exercise their powers to enlarge such accused under-trials on recognizing their right to speedy trial as a facet of right to life under Article 21 of the Constitution of India. The said position of law inures to the benefit of the applicant, for the further reason that the material on record does not indicate that he can be labeled a hardened criminal. The background of the incident as noted hereinabove can also not be ignored in the facts and circumstances of the present case.

15. This Court is convinced that the applicant has made out a case in his favour, in the light of the law laid by the Supreme Court in the various judgments, reiterated in the recent judgment in the case of Javed Gulam Nabi Shaikh Vs. The State of Maharashtra and another¹, wherein the Supreme Court has indicated that the Constitutional Courts must exercise such powers even in cases where the under-trials are facing prosecution under special statutes where the under-trials are required to satisfy higher threshold for being enlarged on bail. In these circumstances, the application deserves to be

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allowed. Appropriate conditions shall be imposed to address the apprehension expressed by the learned APP.

16. In view of the above, the application is allowed in the following terms:

- (A) The applicant shall be released on bail in connection with FIR No.191 of 2017, dated 07th June, 2017, registered at Police Station Amboli, Mumbai, on furnishing P.R. Bond of ₹ 25,000/- with one or two sureties in the like amount, to the satisfaction of the Trial Court
- (B) The applicant, during the pendency of the trial, shall not enter the area of Andheri, Mumbai, i.e. Andheri (East) and Andheri (West)
- (C) The applicant, upon being released on bail, shall report to the Police Station Dindoshi, on the first Monday of every month between 10:00 a.m and 12:00 noon., during the pendency of the trial. The Dindoshi Police Station is directed to record the attendance of the applicant when he approaches the said police station in terms of this direction.
- (D) The applicant shall cooperate with the Trial Court for expeditious disposal of the trial. He shall attend the

proceedings before the Trial Court on each and every date, except when exempted for reasons to be recorded in writing.

(E) The applicant shall furnish the details of his active mobile numbers and his local address to the Investigating Officer and the Trial Court within two weeks of being released on bail.

(F) The applicant shall not influence the informant, witnesses or any other persons concerned with the present case, during the pendency of the trial.

17. In the event the applicant granted bail, violates any of the conditions recorded hereinabove, the bail granted to him would be liable to be cancelled.

18. It is made clear that the observations made hereinabove in the present order are limited to disposing of the present bail application. The Trial Court shall proceed on merits in the present case without being influenced by the observations made hereinabove.

19. The application is disposed of.

(MANISH PITALE, J.)