



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3266 OF 2024**

Irshad Matin Ansari	...	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 has already enlarged Aaditya Krishnakumar Choube and Anshu Nanak Pandey, co-accused, respectively, on bail. In fact, none of the prosecution witnesses has identified the applicant as the person who was a member of the unlawful

assembly in prosecution of the common object of which the deceased was killed.

4. Learned APP fairly submitted that there is no material to incriminate the applicant as a member of the unlawful assembly.

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. The case of the applicant stands on an even better footing as the applicant was neither identified by the police personnel Amol Kamble and Akbar A. Moiuddin on the basis of the images in the CCTV footages, nor the applicant came to be subsequently identified as one of the three assailants who allegedly assaulted the deceased.

7. I am, therefore, inclined to exercise discretion in favour of the applicant.

8. Hence, the following order :

ORDER

(i) The Application stands allowed.

(ii) The Applicant – Irshad Matin Ansari be released on bail in C.R.No.1134 of 2022 registered with Samta Nagar Police Station Mumbai 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 surrender his passport before the jurisdictional Magistrate and shall not leave the country without the prior permission of jurisdictional Magistrate.

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

(viii) 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.)