

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

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BAIL APPLICATION NO.4147 OF 2024

Govind Bharat Parkhe ... Applicant
versus
The State of Maharashtra ... Respondent

Mr. Prashant Pandey a/w. Mr. Dinesh Jadhvani, Mr. Rahul Sinkar, Mr. Pramod Sharma i/b. W3 Legal LLP, for the Applicant.
Mr. H.J. Dedhia, APP for the State.

CORAM: N.J.JAMADAR, J.
DATE : DECEMBER 4, 2024

P.C.

1. Heard the learned Counsel for the parties.
2. The applicant who is arraigned in C.R.No.927 of 2021 registered for the offences punishable under Sections 302, 323, 504, 143, 144, 147, 148 and 149 of the Indian Penal Code, 1860 (the Penal Code) and section 37(1)(a) read with 135 of the Maharashtra Police Act, 1951 has preferred this application to enlarge him on bail.
3. Briefly stated the prosecution case runs as under:-

On 25th July, 2021 the first informant was apprised that Satish Bharadwaj (the deceased) was being assaulted by Govind (A1), the applicant, Subhash @ Dadya (A2) and other 7 to 8 persons near a public toilet. The first informant rushed to the said spot. The first informant noticed that applicant, Subhash @ Dadya (A2), Iswar Naidu (A4),

Prasad @ Parshya (A3) and 3 to 4 other persons were abusing and assaulting the deceased. Subhash @ Dadya (A2) was allegedly armed with a bamboo stick. Ishwar Naidu(A4) had an umbrella. Parshya (A3) was armed with an iron rod. Despite the request of the first informant and other persons, who had gathered threat, not to beat the deceased, the applicant and co-accused allegedly continued to assault the deceased. The applicant allegedly took out a knife and gave blows by means of knife on the person of the deceased. When the first informant and the other witnesses made an attempt to rescue the deceased, the applicant and co-accused manhandled them, and threatened them with dire consequences. Eventually, the deceased succumbed to his injuries. The applicant came to be arrested on 25th July, 2021.

4. During the course of investigation, the applicant allegedly made a discovery leading to the recovery of knife by means of which he had allegedly assaulted the deceased and the bamboo stick with which the co-accused Subhash @ Dadya (A2) was allegedly armed with.

5. Mr. Pandey, learned counsel for the applicant, submitted that by an order dated 23rd February, 2024 in Bail Application No. 677 of 2024, this Court has released the co-accused Subhash @ Dadya (A2) and Ishwar Naidu (A4) on bail. By a further order dated 4th March, 2024 Prasad Madnole (A3) has also been enlarged on bail. Thus, the applicant

is also entitled to the same dispensation as from the material on record, a clear doubt arises as to the role of assault by means of knife attributed to the applicant. Mr. Pandey pressed into service two circumstances. Firstly, apart from the first informant, none of the other eye witnesses have specifically attributed the role of assault by means of knife to the applicant. Second, when the co-accused Manish Hemade (A5) was examined by the Medical Officer, the said co-accused made an extra judicial confession that he had stabbed the victim with knife twice. As Manish Hemade (A5) has been enlarged on bail by the Court of Session, subsequent to the orders passed by this Court, the applicant also deserves to be released on bail.

6. Mr. Dedhia, the learned APP, strongly resisted the prayer for bail. It was submitted that this Court, in the orders, by which the co-accused have been released on bail, has clearly recorded that the injuries which were stated to be the cause of death, were attributable to the assault by the applicant. The material on record indicates that the applicant was the principal assailant. Pursuant to the disclosure statement made by the applicant, the weapon of offence has been recovered. Therefore, the applicant cannot seek parity with the co-accused who had a distinct role.

7. To begin with, it may be appropriate to note that the autopsy

surgeon has opined that the deceased died on account of hemorrhage and shock due to multiple stab injuries (unnatural). In column No. 17 of the postmortem report, Autopsy Surgeon has mentioned two stab injuries and one incised wound. In addition, four contusions were noted. In the FIR, a specific role of assault by means of knife has been attributed to the applicant.

8. Mr. Pandey, initially endeavoured to urge that, the first informant was not present at the scene of occurrence but came thereat upon being informed about the quarrel. In contrast, the other eye witnesses were present near the scene of occurrence from before. However, from the perusal of the statement of the first informant, it would be difficult to urge that the first informant cannot be said to be a witness to the occurrence as the first informant has narrated the incident which he witnessed in sufficient detail.

9. Prima facie, the statements of the other eye witnesses proceed on the line that initially the altercation was between the accused party and Meghraj and later on when the deceased came at the scene of occurrence, the accused started to beat the deceased. Though the witnesses have stated that the members of the unlawful assembly were armed with the weapons like iron rod, bamboo stick, umbrella and knife and they assaulted the deceased by means of those weapons, yet they

have not stated that a particular member of the unlawful assembly assaulted the deceased by means of a particular weapon.

10. At this stage, I am afraid to discard the version of the first informant on the aforesaid count. The narration of the events, especially as regard the role of the applicant, in the FIR, prima facie, incriminates the applicant. The first informant alleged that after the members of the unlawful assembly started to assault the deceased, the applicant whipped out a knife and assaulted the deceased. When the first informant and others went to rescue of the deceased, the applicant charged on them and threatened them with dire consequences by pointing the knife. After those persons retreated, the applicant again went near the deceased who was lying on the ground and abused the deceased by pointing the knife at the neck and exhorted that the deceased has met his fate as the deceased took confrontation with him. Secondly, pursuant to the discovery made by the applicant, the weapon of offence has been recovered.

11. In the face of the aforesaid categorical version of the first informant coupled with discovery which prima facie connects the applicant with the crime, the second ground urged by Mr. Pande, on the strength of the history recorded by the Medical Officer while examining Manish Hemade, does not merit precedence.

12. In substance, there is a strong prima facie case against the applicant. The applicant is alleged to be the principal assailant who caused fatal blows by means of a deadly weapon. The applicant thus cannot claim parity with the co-accused who have been enlarged on bail.

13. I am, therefore, not inclined to exercise the discretion in favour of the applicant.

Hence, the following order :

ORDER

- (i) The Application stands rejected.
- (ii) 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.

(N.J.JAMADAR, J.)