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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO.1344 OF 2024
IN
CRIMINAL APPEAL NO.1437 OF 2023

Abdul Majid @ Ganna Abdul Rashid Kazhi] .. Applicant

vs.

State of Maharashtra & Anr.] .. Respondents

Mr.Aabad Ponda, Senior Advocate a/w Nitin Karhale i/b Shrinidhi Sonak, AOR, for the Applicant.

Mr.S.V. Gavand, APP for the State.

Mr.Shantanu Phanse i/b Ilsa Shaikh, for Respondent No.2.

**CORAM : BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ**

DATE : 14th June, 2024

P.C.

1] By the Judgment and Order dated 08.12.2023, passed by the Additional Sessions Judge, Thane, in Sessions Case No.168 of 2016, three accused persons stand convicted for committing an offence punishable under Section 302 read with 34 of the Indian Penal Code and sentenced to suffer Rigorous Imprisonment till death. In default of payment of fine amount of Rs.10,000/- each, they were directed to suffer Simple Imprisonment for five months.

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The Accused No.1, Abdul Majid @ Ganna Abdul Rashid Kazhi, has filed the Appeal challenging the said conviction and the Appeal is admitted on 09.01.2024.

In the pending Appeal, Interim Application No.1344 of 2024 is taken out under Section 389 of the Criminal Procedure Code, seeking release of the Appellant on bail, on such terms and conditions, as the Court may deem fit.

2] We have heard learned senior counsel Mr.Abad Ponda for the Applicant, Mr. S.V. Gavand, learned APP for the State and the learned counsel Mr. Shantanu Phanse for the complainant, the wife of deceased.

Mr. Ponda would submit that the Applicant is incarcerated since last more than 8 years and the case against the Applicant rest solely on the testimony of three witnesses, but according to him, the evidence brought on record through these witnesses is self-contradictory and intrinsically untrustworthy.

According to him, there is no other evidence against the Applicant in form of recovery of weapon, and even if the allegations are taken to be as a gospel truth, the medical evidence, the prosecution story and the deposition by the witnesses, contradict each other and though the learned Sessions Judge has entirely believed the case of the prosecution and rendered a finding of conviction, according

to Mr.Ponda there is sufficient chance that this Court may take a different view on appreciating the evidence and may acquit the present Applicant of the charges and for this reason, this Court should exercise the power in it and secure his release on bail.

3] We have perused the impugned Judgment, which has tried three accused persons for the offence under Section 302 read with 34 and also Section 504 and 506 of the Indian Penal Code and also under Section 37(1)(3) read with 135 of the Bombay Police Act.

As per the prosecution case, the investigating machinery was set rolling when the informant Sajid Thankar, informed Mumbra Police Station on 21.01.2016, that at 6.45 p.m. when he was returning from Namaj and was enroute his house, Sajid Ansari called him and when he approached him, he told him that they will go to bring milk at Amrut Nagar, Mumbra. The informant suggested him to ride on a motorcycle, but Sajid insisted on walking. As per the informant, when they were passing from Darul Falah Masjid and reached at Alhamra Cloth Shop near Accord Complex Society, Majid Kazhi @ Ganna i.e. the present Applicant came from behind and started abusing him. The informant got scared when Majid picked up a wooden stump and hit on his head from backside, as a result he fell down and at that moment, one Mohd. Shaikh, resident of Memon Colony also came there and caught Sajid by his neck and assaulted him by a sharp weapon on left side of the

waist and Majid i.e. the present Applicant is alleged to have instigated him by stating that he should be done to death.

Two more persons came on the spot and they started beating Sajid with fist and kicks and seeing all this, the informant screamed for help.

When people attempted to come to their rescue, accused No.1 Majid @ Ganna and Mohd. Shaikh (accused No.2) threatened with the weapons in their hand to keep people away. Thereafter, Majid again started beating Sajid with the help of stump and a sharp weapon was inserted in his waist. The informant, in an attempt to rescue Sajid, picked a cycle and threw it on the assailants, but Mohd. Shaikh who was holding a sharp weapon in his hand, rushed towards him, which scared the informant and he started running, when he was chased and assaulted.

It is the case of the prosecution that the incident took place in the street light and there were several witnesses to the said incident. Thereafter, Sajid was taken to Rehmania Hospital and was declared dead, during the treatment.

4] In order to bring home the guilt of the accused persons, 8 witnesses are examined by the prosecution, first one being the informant and eye witness to the incident, Sajid Thankar, two other eye witnesses viz Sayyed Mohammed Shahabaj Umar (PW 3) and Ruksar

Ansari (PW 4), whereas, Dr. Rajeshwar Pate, Medical Officer is examined as PW 6, who conducted postmortem on the dead body of the deceased and PI Manikrao Jadhav, the Investigating Officer, being examined as PW 8.

The informant Sajid Thankar is brother in law of the deceased, who was an RTI Activist and through evidence of eye witnesses the prosecution has brought the incident of assault before the trial Judge and PW 1 has categorically deposed that the previous enmity regarding action taken by the deceased by lodging complaint regarding unauthorized construction on the gate of Accord Complex, with Thane Municipal Corporation and lodging of the FIR, was the motive.

PW 1 has testified about the incident in detail and he deposed about the happenings and as to how and who assaulted the deceased and ultimately proved his report given to the Police (Exhibit 19).

PW 1 has identified the accused persons and also weapons used by the accused persons and he deposed about the motive for the assailants to assault the deceased.

5] As per PW 1, accused Majid @ Ganna came from the backside of Sajid and started abusing Sajid. Thereafter, according to him, he gave blow of cricket stump on the back side head of Sajid and therefore, he sustained bleeding injury on his head.

6] According to Mr. Ponda, when the postmortem report is carefully perused, no injury is found on the head and out of the 8 injuries one injury is in form of stab injury over left buttock, whereas, there are four incised wounds over the back/neck and presence of contusions on left arm, over back and two abrasions over left knee.

When the corresponding injuries are perused in the light of opinion of the Medical Officer as to the cause of death being hemorrhage and shock due to injury to vital structures due to stab wounds caused by sharp pointed weapon, one thing is evident that there is no evidence adduced establishing the injury on head, as the medical expert has opined that the injuries mentioned in the postmortem report can be possible by pointed knife and wooden stick and on being confronted with the weapons seized during the investigation, he categorically opined that injury Nos.1 to 5 could be possible by knife and the stick can be caused for injury No.6 to 8 i.e. contusion and two abrasions.

7] Mr. Phanse, the learned counsel representing the complainant has invited our attention to the deposition of PW 1, who has deposed that accused Majid took out knife and started to assault Sajid on his back, however, this has come as omission and this is proved through the Investigating Officer (PW 8) and the effect of same will have to be appreciated when the Appeal is heard.

8] As far as evidence of PW 3 Sayyad Mohammed Shahabaj Umar another eye witness is concerned, he has deposed that he alongwith his mother were sitting in the hall of the house when they heard loud shouts and saw deceased Sajid Ansari, the complainant, accused Majid Kazi, Mohammed Shaikh and his son Siddiq Kazi and one more person on the road. Even according to PW 3, Mohammed Shaikh stabbed Sajid Anjsari by knife and Majid Kazi (Applicant) gave blow of cricket stump on the backside of head of Sajid Ansari.

Further, when we turn ourselves to the evidence of PW 4 Ruksar Ansari, it is seen that, she has categorically deposed that accused Abdul Majid gave a blow of cricket stump on the backside on the head of Sajid Ansari when he sustained bleeding injury on his head; and accused Mohammad Usman Shaikh stabbed knife in the left side of stomach near waist of Sajid and twisted it and accused Mohammad Siddique Kazi and one unknown person started assaulting Sajid by fist and kick blows.

9] If the evidence of the three eye witnesses is taken as they have deposed, the postmortem report or for that matter PW 6 do not refer to any injury on the head and he has opined the cause of death to be shock due to injury caused to vital organs due to stab wounds caused by sharp pointed weapon.

All the three eye witnesses have spoken of deceased having

been assaulted by the Applicant/Accused No.1 by stump, but there is no recovery of the same from the Applicant.

10] On perusal of the evidence of PW 6 who has carried out postmortem, and also on perusal of inquest Panchanama, it appears that no injury is found on head of the deceased, which is attributed to the present Applicant by all the three eye witnesses.

The material brought before the learned trial Judge need appreciation in appropriate perspective and particularly in the light of the evidence of PW 6 and the Postmortem report.

Since, prima facie we are of the view that there is a chance of the role of the Applicant being appreciated, from a new angle, by reading the evidence adduced by the prosecution and in the wake of long incarceration of the Applicant, we deem it appropriate to release him on bail, whilst his Appeal is pending before this court for adjudication.

11] Hence, we pass the following order :

ORDER

a] Interim Application is allowed.

b] The Applicant Abdul Majid @ Ganna Abdul Rashid Kazhi shall be released on bail in connection with C.R.No.I-41/2016 (SC No.168/2016) registered with Mumbra Police Station, on furnishing P.R. bond to the extent of Rs.50,000/- with one or two sureties of the like amount.

(c) The applicant shall mark his attendance in the concerned Police Station on first Monday of every trimester between 10.00 a.m. to 12.00 noon.

(d) Upon release, the Applicant shall furnish his contact number and permanent residential address to the Investigating Officer and shall keep him updated in case of any change.

[MANJUSHA DESHPANDE, J]

[BHARATI DANGRE, J]