



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2767 OF 2024**

Pandit Sakharam Mhatre ... Applicant
versus
State of Maharashtra ... Respondent

WITH
INTERIM APPLICATION NO.3927 OF 2024
IN
BAIL APPLICATION NO.2767 OF 2024

Sadhana Vikas Mishra ... Applicant/Intervener
and
Pandit Sakharam Mhatre ... Applicant
versus
State of Maharashtra ... Respondent

Mr. Vinod Kashid for Applicant.
Mr. H.J.Dedhia, APP for State.
Mr. Pawan Mali, for Intervener.

CORAM: N.J.JAMADAR, J.

DATE : 16 OCTOBER 2024

P.C.

1. The applicant, who is arraigned in Sessions Case No.430 of 2022 arising out of C.R.No.703 of 2022 registered with Manpada Police Station for the offences punishable under Sections 302, 307, 427, 323, 504 and 506 read with Section 34 of the Indian Penal Code, 1860, has preferred this application to enlarge him on bail.
2. On 11 September 2022, there was a collusion between the tempo driven by the first informant and car driven by the applicant (A1). Altercation

ensued. The applicant allegedly abused and assaulted the first informant and his uncle. Despite the first informant showing willingness to compensate the applicant for the loss, the applicant called few persons by making a telephone call. Ashish Mhatre (A2), son of the applicant and two others, including a child in conflict with law, came thereat. Quarrel escalated. The applicant allegedly took out a knife like sharp object from the car and stabbed the first informant. When the passerby and nearby residents tried to intervene, the applicant threatened to cause harm to them. Vikas Mishra (deceased), who tried to rescue the first informant, was assaulted by the applicant by means of the said weapon on the thigh. The deceased was shifted to Asian Institute of Medical Sciences, Dombivali, where he succumbed to the injuries.

3. Learned Counsel for the Applicant, submitted that the incident occurred at the spur of the moment. The applicant had not known the deceased from before. There was neither any motive, nor intention to kill the deceased. A single blow was given on the thigh, a non-vital part of the body. There was no premeditation. Thus, the act would not fall within the dragnet of Section 302 of the Penal Code. Learned Counsel invited attention of the Court to an order dated 7 March 2024 whereby Ashish (A2) co-accused came to be enlarged on bail.

4. Learned APP opposed the prayer for bail. It was submitted that an innocent person who had come to the rescue of the first informant lost his life.

As the applicant took out a knife from the car and, thereafter, assaulted the first informant and the deceased, it cannot be said that there was no intention to cause the death of the deceased.

5. Mr. Mali, learned Counsel for the Intervener, supplemented the submissions of the learned APP. Mr. Mali would urge that the material on record would indicate that the applicant was an aggressor right from the inception of the incident. It was neither a case of grave and sudden provocation, nor a sudden quarrel. Therefore, the applicant does not deserve to be enlarged on bail.

6. I have perused the report under Section 173 of the Code and the documents annexed with it. Prima facie, it appears that the genesis of the offences is in a road rage. The fact that there was collusion between the tempo and the car driven by the applicant is borne out by the scene of occurrence panchanama. Evidently, after the applicant called Ashish Mhatre (A2) and others, the quarrel escalated and fight ensued. It is not the prosecution case that the applicant had known the deceased from before. It seems, the deceased tried to intervene and save the first informant, and, thereupon he was assaulted by the applicant.

7. The nature of injury and the part of the body selected to inflict the blow, prima facie, bear upon the question of intent to cause death. Post Mortem report indicates that the deceased passed away on 15 September 2022, after

about 4 days of the occurrence. Cause of death was 'septicemia with right leg cellulitis with subdural hematoma in a case of assault'. The Autopsy Surgeon has noted in Column No.17 that there was a wound over the right thigh, medial aspect, upper 1/3 and a black discoloration over right iliac and right inguinal region. No other external injury was noted.

8. Prima facie, it appears to be a case of single blow by means of a sharp weapon which the applicant picked up from the car. The injury was apparently inflicted on a non-vital part of the body. If the said factor is considered in the light of the genesis of the occurrence, which was essentially in a road rage, it prima facie appears debatable whether the case would fall within the dragnet of the offence punishable under Section 302 of the Penal Code.

9. To add to this, the Medical Officer opined that the cause of death was septicemia with right leg cellulitis with subdural hematoma. Thus, the aspect as to whether the offence would fall within the tentacles of Section 302 or 304 of the Penal Code, would warrant adjudication at the trial.

10. The applicant has been in custody since 13 September 2022. Investigation is complete for all intent and purpose. The applicant seems to have roots in society to tie him down to his place of abode. Thus, the possibility of fleeing away from justice seems to be remote. Apprehension on the part of the prosecution can be taken care of by imposing appropriate

conditions.

11. Hence, the following order :

ORDER

(i) The Application stands allowed.

(ii) The Applicant – Pandit Sakharam Mhatre be released on bail in C.R.No.703 of 2022 registered with Manpada 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 before Manpada 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.

(vi) 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.

Interim Application No.3927 of 2024 also stands disposed.

(N.J.JAMADAR, J.)