

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 413 OF 2024

Ajit Pramod Zha @ Gongari Shot .. Applicant

Versus

State of Maharashtra .. Respondent

-
- Mr. Vashisth Kumar Arora for Applicant
 - Mr. Dinesh J. Haldankar, APP for State
 - Mr. Sunil B. Parab, PSI, Shivaji Park Police Station
-

CORAM : MILIND N. JADHAV, J.

DATE : MARCH 19, 2025

P. C.:

1. Heard Mr. Arora, learned Advocate for Applicant and Mr. Haldankar, learned APP for State.

2. Applicant - accused has filed the present Application for regular bail under Section 439 of the Code of Criminal Procedure, 1973 (for short, "**Cr.P.C.**") in connection with Crime No. 511/2022 registered with Shivaji Park Police Station, Mumbai for offences punishable under Sections 302 r/w 34 of the Indian Penal Code, 1860 (for short, "**IPC**").

3. The Applicant stands indicted in the aforesaid crime for being part of a group of children who allegedly assaulted the deceased victim at the Children's Home in Matunga. FIR is registered on 17.08.2022 by the Probationary Officer of the Children's Home stating

that in the evening on 16.08.2022 after he left the Children's Home at 6.30 p.m., he received a phone call at around 7.30 p.m about the victim being unconscious and his pulse was deteriorating rapidly. The staff of the Children's Home took the victim to Sion Hospital for treatment where he was declared dead on admission. The victim, aged 16 years, had been admitted to the Children's Home one month prior to the incident. FIR was lodged and on preliminary investigation, the Investigating Officer (IO), Chairman of the Children's Home Mr. Bansode and staff of the Children's Home saw the CCTV footage of the said Children's Home where the victim was housed on the date of the incident. From the CCTV footage, it was specifically seen that four children were inflicting fist and kick blows on the deceased victim. They were specifically identified as accused No. 1 - Salman Shaikh, accused No. 3 - Rahat Khan, accused No. 4 Avesh Khan and accused No. 5 Aniket Chavan. The detailed report from the CCTV footage and seizure panchnama of the DVR and the detailed transcript of the CCTV footage appended at page No. 38 of the Application would *prima facie* disclose the aforesaid picture. Mr. Arora would therefore submit that the *prima facie* material placed by the prosecution in the chargesheet along with the witness statements appended thereto does not establish the presence of the Applicant at the scene of the crime. Furthermore, the Applicant is not

seen in the company of co-accused No. 6, who is alleged to have participated in the commission of the offence. Mr. Arora would therefore submit that *prima facie* material placed by the prosecution in the chargesheet and the witness statements recorded which are appended thereto do not show the presence of Applicant in the scene of crime neither is the Applicant seen along with another co-accused who is arraigned as accused No. 6 who has participated in the alleged crime. Record of the case which is emanating from the witness statements also support the seizure panchnama and the detailed CCTV footage appended at page No. 38 of the Application. It is seen that insofar as accused Nos. 3 to 6 are concerned, all of them have been granted bail by the Juvenile Justice Court. *Prima facie*, it is also seen that initially FIR was registered against four children / persons / co-accused persons who were seen in the CCTV footage and the name of the Applicant was not stated at the inception.

4. In view of the aforesaid *prima facie* findings, the Applicant has made out a strong case for the grant of bail notwithstanding the submissions advanced by Mr. Haldankar, learned APP, regarding the commencement of trial and the examination of one prosecution witness thus far. Needless to state that complicity of the Applicant shall be determined by the prosecution in the trial. Hence, Bail Application is allowed subject to the following terms and conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs.10,000/- with one or two sureties in the like amount;
- (ii) Before his actual release from jail, Applicant shall furnish his address where he proposes to reside after his release from jail to the concerned Police Station and also to the trial Court;
- (iii) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;
- (iv) Applicant shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;
- (v) Applicant shall co-operate with the conduct of trial and attend the trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if he does so, it will entitle the prosecution to apply for cancellation of this order;
- (vi) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;

(vii) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner; and

(viii) In case of any infraction of the above conditions and / or two consecutive defaults in marking his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

5. It is clarified that the observations made in this order are limited for the purpose of granting Bail only and I have not made any observations on merits of the case. The trial shall be adjudicated on the strength of the evidence led and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

6. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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