

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.544 OF 2024

Tejas Shamsunder Shinde

.. Applicant

Versus

The State of Maharashtra

.. Respondent

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- Ms. Aruna S. Pai, Advocate for Applicant.
- Ms. Mahalakshmi Ganapathy, APP for Respondent – the State of Maharashtra.

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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 03, 2025

JUDGMENT:-

1. Heard Ms. Pai, learned Advocate for Applicant and Ms. Ganapathy, learned APP for Respondent – the State of Maharashtra.

2. This is an Application by Applicant who is 20 years old under Section 439 of Code of Criminal Procedure, 1973 (for short ‘Cr.P.C.’) seeking Bail in connection with C.R. No.48 of 2023 registered with Tilak Nagar Police Station, Dombivali (East), Kalyan indicted for offence punishable under Section 302 of the Indian Penal Code, 1860 (for short ‘IPC’).

3. The victim in the present case is the Applicant’s own father who was about 69 years old on the date of the incident. The incident happened on 22.02.2023 at about 05:00 p.m. in the evening. Record shows that the victim was unwell and bed-ridden. Seldom he used to get up from his bed for his ablutions and he would require care and

support even for passing urine. A urine pot is present in the house and admittedly victim's wife and Applicant both being his immediate and close family members used to aid and assist the victim for the same.

4. In the above backdrop on the date of incident it is seen that at about 13:30 hours (01:30 p.m.) Applicant returned back from his college. He completed his Higher Secondary Certificate School Examination having scored 78.83 % marks and was pursuing further education as a Second Year student of Bachelor of Management studies in K. V. Pendharkar College, Dombivali (East), District – Thane. The record also shows that the victim was a chronic alcoholic, suffering from kidney ailment and used to consume tobacco leading to his medical condition.

5. The mother of Applicant and wife of victim was not present in the house on the date of incident as she used to work as house maid. Record shows that on the date of incident prior to the incident between 01:30 p.m. to 05:00 p.m., Applicant had his lunch after returning from college and was present in the house and on a couple of occasions, the victim i.e. his father passed urine and Applicant aided him to pass urine in the urine pot and also washed the urine pot and kept it back in the same condition.

6. However, at about 05:00 p.m. the victim was taking certain medication / tablets which were opposed to by Applicant on the

ground that the said tablets were not prescribed by any physician and they would ultimately harm him if they were taken without prescription. This intervention of Applicant was not taken kindly by his father – the victim who was visibly suffering and there was a verbal altercation between the father and son which escalated further. For a long time even prior to the incident having happened the so-called verbal altercation between the father and the son persisted and it is seen from the record that the father - victim in view of the ignominy suffered by him was constantly hurling abuses on to the Applicant as also, his mother. This repeated barrage of abuses had a deleterious effect on the young mind of Applicant and like any other young son he retaliated by asking his father to ‘shut-up’ and mind his own business and while doing so in return ended up abusing him. All this is confessed by Applicant in his statement which is recorded three days after the incident on 25.02.2023 which is appended at page No.38 of the Application.

7. Thereafter since the victim – father did not arrest the situation and however retaliated by repeatedly abusing the Applicant and his mother, the situation escalated to such an extent that Applicant could not control his urge to quieten the victim i.e. his father leading to inflicting 3 – 4 blows with the milestone (काटा) which was lying in the house. After the father was hurt because of inflicting of the blows he continued abusing the Applicant even thereafter and this situation

irked Applicant to such an extent that he immediately lay hand on the kitchen knife and inflicted a sharp incised wound on his neck to quieten him.

8. What transpired thereafter is that Applicant came out of his house and bolted the house from the outside, went to his immediate neighbour, borrowed Rs.100/- from the neighbour and thereafter took a rickshaw and approached the nearest Police Station where he went and confessed to having killed his father and narrated the incident which occurred. The father was moved to the hospital at about 08:00 p.m. where he was declared dead on admission. The memorandum panchnama was recorded on the following day i.e. 23.02.2023 wherein Applicant narrated the aforementioned facts. Confession of Applicant was recorded three days later i.e. on 25.02.2023.

9. Ms. Ganapathy, learned APP has vehemently objected to the Application by drawing my attention to the medical report which is appended at page No.64 of the Application to contend that Applicant was clearly conscious about his actions and from what has been narrated in Applicant's case this cannot be construed as a case of grave and sudden provocation. She would persuade me to consider the nature and extent of the injuries which are stated against serial No.17 in the post-mortem report to drive home the point that the act of Applicant was not only cruel in nature but it is a case of cold blooded

murder by Applicant. She would submit that the act of Applicant will have to be viewed strictly by the Court considering that Applicant not only initially inflicted blows with the milestone on temple / head of the victim i.e. father but also when he was critically injured he also ensured that he would die by using the kitchen knife and committed the horrific act of slashing his neck to such an extent that he ultimately bled to his death.

10. Ms. Pai has taken me through the record of the case and would persuade the Court to consider the antecedents of Applicant. She would submit that Applicant was a 20 year old student at time of incident and for last two years is incarcerated. She would submit that Applicant secured 61.80% marks in his Secondary School Certificate examination followed by 78.83% marks in Higher Secondary Certificate examination, the mark-sheets of which are appended at page Nos.13 and 15 - Exhibit-A collectively to the Application.

11. She would submit that Applicant was studying in the Second Year of Bachelor of Management Studies Course and would otherwise have had a bright future despite the fact that he had an ailing father who was bed-ridden and his education was supported by his mother who was working as a house-maid at the then time. She would persuade me to consider the fact that happening of the incident can never be a pre-mediated incident as one could clearly understand the

circumstances in which the said incident unfolded. She would persuade the Court to consider the Applicant's case for bail rather than keeping him incarcerated further and allowing him to turn into a hardened criminal despite the fact that this is a case under Section 302 of IPC.

12. I have heard Ms. Pai, learned Advocate for Applicant and Ms. Ganapathy, learned APP for Respondent – State of Maharashtra and perused the record. Submissions made by them have received due consideration by this Court.

13. There is no doubt that the act as pointed out by Ms. Ganapathy, learned APP has resulted in a gruesome murder of victim who is the father of Applicant. The act is by virtue of two specific incidents followed one after the other by use of milestone for inflicting the blow on the head of the victim and followed by using of knife to slash the neck. For the Court to understand a case of such nature the facts of the case would rather speak for itself.

14. It is an admitted position that victim was bed-ridden for long and he was undergoing treatment for kidney ailment in hospital. From perusal of the record it is also seen that Applicant was at home alongwith his father and in between once the father had passed urine in the urine pot which was infact cleaned by the Applicant.

15. However the trigger of the incident probably would be the

second time when the father had to pass urine when he attempted to get up from his bed but instead of getting up he passed urine in his trousers thereby wetting the entire bed despite which it is seen that Applicant mopped and cleaned the entire place. However the constant jab of the father of abusing the Applicant and his mother continued during this time which Applicant could not take it after some time. The retaliation of Applicant to father's constant jab of abuses to his mother and himself had a deleterious effect on the mind of the 20 year old student which he could not handle which led him to retaliate back initially by asking his father to shut up and when he did not listen and stop he ended up abusing him which is seen from the confessional statement given by him.

16. However the situation did not de-escalate from there, rather it got carried to such an extent that Applicant could not bear or tolerate the repeated abusing by his father. His student mind clearly crossed the threshold and inflicted and caused injury to his father using the milestone and even after that when the father did not keep quiet he could not control his provocation and anger and took the kitchen knife and inflicted a fatal blow on the father's neck. The aforesaid situation was thereafter arrested by Applicant himself by bolting the door from outside and approaching the nearest Police Station immediately and confessing to the crime committed.

17. From the above what is garnered and gathered by the Court is that Applicant and victim were both found in such a state that control of the situation would be otherwise difficult for either of the parties. On the one side there was Applicant who was a college student being provided and taken care by his mother and the other side was his own father who was undergoing medical treatment for his kidney ailment and had remained bed-ridden and was required to be provided care for either by his wife or by Applicant – son himself.

18. One of the reason which strongly persuades me to consider grant of bail is the Applicant's age being 20 years at the time of his arrest and he being a student of Second Year Bachelor of Management Studies. It needs to be considered that despite his mother being a house maid and his father bed-ridden with kidney ailment, Applicant was studying in a reputed college in Dombivali and on the count of education he should be given an opportunity by the Court to continue his education.

19. The Applicant was a young boy aged about 20 years. He completed the First year of his Degree college and was poised to appear for his Second Year examination when the incident occurred involving the unsavory event. He has no antecedents. If the situation would be considered in a vacuum, the factors having a bearing in the Court's mind would be distinct from what it is now; this is because the

Applicant is at the threshold of his adult life and halting his education at this stage and subjecting him to further custody would make it highly likely that he would be entangled in the vicious cycle and downward spiral of criminality making him a hardened criminal posing a future perpetual threat to the society. If he goes back to his studies and college, it can reform him. Hence every semblance of a chance in this direction should be taken by the Court.

20. In this context, I would like to draw attention to the judgement of the Single Judge of the Delhi High Court in the case of *Siddharth Jain v. Shaheed Sukhdev College of Business Studies*¹. This decision of the Single Judge of the Delhi High Court was comprehensively upheld by the Division Bench of the Delhi High Court by order dated 23.05.2016 reported in *2016 SCC OnLine Del 3438*. In that case before the Court, the Petitioner was a young adult approximately 20 years of age who faced an order of the Disciplinary Committee of his college having recommended him to be debarred for two years from entering the college premises, attending classes, from participation or representing the college on any of the activities or appear in university / college examinations due to serious misdemeanors. The Principal of the college reduced the period of debarment to 1 year. In this background the Petitioner approached the Court. While dealing with the said case and the Petitioner's

¹ 2015 SCC Online Del 1342.

misdemeanor, the Court while referring to the provisions of the Probation of Offenders Act, certain provisions of the IPC and certain decisions rendered by the Supreme Court held that the Court has very wide powers to deal with an offender who is under 21 years of age and if found guilty of having committed an offence.

21. Before me is the case of an undertrial, who is on the threshold of adulthood. In this context, the Delhi High Court extracted the observations of the Supreme Court in paragraphs Nos.4 and 7 of the judgement in the case of *Ishar Das v. State of Punjab*² which would read as under:-

“ 4. There is, in our opinion, considerable force in the stand taken on behalf of the appellant by his learned counsel and we find ourselves unable to accede the submission made on behalf of the respondent State. The Probation of Offenders Act received the assent of the President on May 16, 1958 and was published in the Gazette of India, dated May 19, 1958. According to sub section (3) of Section 1 of that Act, it shall come into force in a State on such date as the State Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different parts of the State. The fact that the Act was in force in the State of Punjab before the sample of ice cream was taken from the appellant has not been disputed before us. Section 3 of the Act gives power to the court to release certain offenders after admonition. According to that section, where any person is found guilty of having committed an offence punishable under Section 379 or Section 380 or Section 381 or Section 404 or Section 420 of the Penal Code, 1860 or any offence punishable with imprisonment for not more than two years, or with fine, or with both under the Penal Code, 1860 or any other law, and no previous conviction is proved against him and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient so to do, then notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under Section 4, release him after due admonition. The relevant part of sub-section (1) of Section 4 and sub-section (1) of Section 6 of the Act read as under:

2 1973 (2) SCC 65.

“4. (1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour.

6. (1) When any person under twenty-one years of age is found guilty of having committed an offence punishable with imprisonment (but not with imprisonment for life), the court by which the person is found guilty shall not sentence him to imprisonment unless it is satisfied that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it would not be desirable to deal with him under Section 3 or Section 4, and if the court passes any sentence of imprisonment on the offender, it shall record its reasons for doing so.”

The Probation of Offenders Act, as observed, by Subba Rao, J. (as he then was) speaking for the majority in the case of Rattan Lal v. State of Punjab [AIR 1965 SC 444 : (1964) 7 SCR 676 : (1965) 1 SCJ 779 : (1965) 1 Cri LJ 360] is a milestone in the progress of the modern liberal trend of reform in the field of penology. It is the result of the recognition of the doctrine that the object of criminal law is more to reform the individual offender than to punish him. Broadly stated, the Act distinguishes offenders below 21 years of age and those above that age, and offenders who are guilty of having committed an offence punishable with death or imprisonment for life and those who are guilty of a lesser offence. While in the case of offenders who are above the age of 21 years absolute discretion is given to the court to release them after admonition or on probation of good conduct, subject to the conditions laid down in the appropriate provisions of the Act, in the case of offenders below the age of 21 years, an injunction is issued to the court not to sentence them to imprisonment unless it is satisfied that, having regard to the circumstances of the case, including the nature of the offence and the character of the offenders, it is not desirable to deal with them under Sections 3 and 4 of the Act.

7. The question which arises for determination is whether despite the

fact that a minimum sentence of imprisonment for a term of six months and a fine of rupees one thousand has been prescribed by the legislature for a person found guilty of the offence under the Prevention of Food Adulteration Act, the court can resort to the provisions of the Probation of Offenders Act. In this respect we find that sub-section (1) of Section 4 of the Probation of Offenders Act contains the words “notwithstanding anything contained in law for the time being in force”. The above non obstante clause points to the conclusions that the provisions of Section 4 of the Probation of Offenders Act would have overriding effect and shall prevail if the other conditions prescribed are fulfilled. Those conditions are: (1) the accused is found guilty of having committed an offence not punishable with death or imprisonment for life, (2) the court finding him guilty is of the opinion that having regard to the circumstances of the case, including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct and (3) the accused in such an event enters into a bond with or without sureties to appear and receive sentence when called upon during such period not exceeding three years as the court may direct and, in the meantime, to keep the peace and be of good behaviour. Sub- section (1) of Section 6 of the abovementioned Act, as stated earlier, imposes a duty upon the court when it finds a person under 21 years of age, guilty of an offence punishable with imprisonment other than imprisonment for life, not to sentence him to imprisonment unless the court is satisfied that, having regard to the circumstances of the case, including the nature of the offence and the character of the offender, it would not be desirable to deal with him under Section 3 or 4 of the Act but to award a sentence of imprisonment to him. The underlying object of the above provisions obviously is that an accused person should be given a chance of reformation which he would lose in case he is incarcerated in prison and associates with hardened criminals. So far as persons who are less than 21 years of age are concerned, special provisions have been enacted to prevent their confinement in jail at young age with a view to obviate the possibility of their being subjected to the pernicious influence of hardened criminals. It has accordingly been enacted that in the case of a person who is less than 21 years of age and is convicted for an offence not punishable with imprisonment for life. He shall not be sentenced to imprisonment unless there exist reasons which justify such a course. Such reasons have to be recorded in writing.”

22. The Court held that the rationale behind a different regime being followed world over *vis-a-vis* young offenders is to prevent recidivism which can be prevented if young offenders are dealt with appropriately with due sensitivity at an early age. Court also referred to a range of different sentences *qua* young offenders depending upon

gravity of offences and age of offenders. The Court held that while dealing with a young offender, every attempt should be made to ascertain whether the sentencing disposition could be tailored as long as it is consistent with other sentencing principles so as to promote reformation and lead to rehabilitation of the offender. The Court referred to the facet of the doctrine of proportionality often used by our Courts in such matters.

23. Before me is the case of a young offender and as held above his exclusion from the normal educational stream for a period of time brings about unpleasant consequences and harm which in any case amongst others is the purpose of any punishment. The Applicant before me has admitted the act by himself walking to the Police Station giving information to the Police. He could have even run away had he been of a different criminal tendency. At this stage, I am not considering its evidentiary value. The confessional statement when read would show that the Petitioner is contrite. He is a young adult offender. He clearly falls in the category of a young adult who has crossed his age of juvenility but is less than 21 years of age at the time when the offence is committed. It is widely recognised that younger the age of the offender, the lesser is its culpability. Therefore having regard to the totality of the circumstances before me at this stage, on *prima facie* consideration I am inclined to consider the Applicant's case.

24. It should also be noted that in a case where an offender is undergoing studies, his exclusion from education for a period of time is an added layer of punishment over and above what a non-student accused may be subjected to. This is because a student undergoing incarceration suffers loss of precious academic time which cannot be bartered for any wealth in the world. He also constantly witnesses his peers moving ahead in life than compared to him and when the frustration becomes insurmountable such frustration can create an emotion of rebellion, which, coupled with the exposure to criminality in prison, can easily gain traction and push him to become a hardened criminal.

25. This Court can only make an attempt and should make an attempt to positively impact the life of the Applicant before it. It is on the belief that the Applicant, having once gained the confidence of Court, would make a sincere attempt to reform and rehabilitate himself due to his academic credentials achieved in SSC and HSC exams and he studying the Management Degree Course despite heavy odds stacked against him. Considering the foregoing, I am of the opinion that the Applicant should be given a chance to make an attempt to demonstrate that he has reformed his conduct and is leading a law-abiding life with prospects of making a positive impact on society.

26. In view of the above, despite vehement objection raised by Ms. Ganapathy, learned APP to consider the facts of the case, I am inclined to grant bail to the Applicant before me in order to ensure that an opportunity is given to him complete his Management Degree studies on his release from prison in the next academic year and continue his education. If Applicant is released from jail the avenue will be open for him to continue his Management studies in the forthcoming academic year 2025-2026 and become a responsible citizen.

27. Taking an overall view as to how the incident may have transpired from the available material on record, I am *prima facie* of the opinion that the situation leading to the ultimate assault was a result of grave provocation because of the precursor incidents with respect to victim hurling repeated barrage of abuses not only on the Applicant but also his mother, which could not be handled by the Applicant's 20 year old adolescent mind at that stage.

28. Applicant undoubtedly may have committed the direful act as pointed by Ms. Ganapathy, learned APP but one would also have to consider the facts which unfolded resulting into the incident leading to the death of the victim. Applicant is a student of Management rather was a student of Bachelor of Management studying in Second Year and

every attempt should be made by the Court by ensuring that Applicant is accorded an opportunity to continue and go back to his studies. In the facts of the present case, I am inclined to therefore release the Applicant on bail subject to following terms and conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;
- (ii) Applicant shall report to the Investigating Officer of concerned Police Station once every month on the third Sunday between 10:00 a.m. to 12:00 p.m. for the first three months and thereafter as and when called;
- (iii) 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;
- (iv) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner;
- (v) Applicant shall keep the Investigating Officer informed of his current address and mobile contact number and / or change of residence or mobile details, if any, from

time to time;

(vi) Any infraction of the above conditions shall entail the prosecution to seek cancellation of this order.

29. This Court hopes and expects that after his release on bail, Applicant shall apply to his college to continue his studies or any other college and ensure that he takes admission and continue his Management studies and become a good citizen of this Country.

30. The aforesaid observations are *prima facie* on the basis of record of the case which have been argued before me and is an expression of opinion by this Court only for the purpose of enlargement of Applicant on bail and shall not influence the trial in the present case.

31. Bail Application stands allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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