

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.841 OF 2024

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Yash Vijay Rupwae @ Monya

...Applicant

vs.

The State of Maharashtra

...Respondent

Mr. Vinod Kashid, for the Applicant.

Mr. A.A. Naik, APP, for the Respondent/State.

Mr. S.G. Deshmukh, PSI, Hill Line police station.

CORAM : N. J. JAMADAR, J.

DATE : FEBRUARY 11, 2025

P.C.:

1. Heard the learned counsel for the parties.

2. The applicant, who is arraigned in CR No. 237 of 2021, registered with Hill Line police station, for the offences punishable under Sections 120B, 302, 201, 143, 144, 147, 148, 149 and 506 (2) of the Indian Penal Code, 1860, Section 135 read with Section 37 (1) of the Maharashtra Police Act, 1951 and Section 4 read with Section 25 of the Arms Act, 1959, has preferred this application to enlarge him on bail.

3. The indictment against the applicant and the co-accused runs as under:-

3a. Sushant Bhaskar Gaikwad @ Gudya (the deceased) was a friend of Kunal Gaikwad, the first informant. There was animosity between the deceased and Akash Shinde @ Chintya (A1). On 17th

September, 2021, the deceased, first informant and their friend Prakash Raibole, had drinks at Premnagar Hill. At 2 pm they came in front of the meat stall of Makhansingh. The first informant went to fetch a cigarette. He heard cries of 'Guddya found'.

3b. The first informant noticed that the Akash @ Chintya (A1), Amol More @ Vangya (A2), the applicant (A3), Abhirup Thorat (A4) and a child in conflict with law were approaching towards the deceased armed with sword, scythe, knife and iron rod. They exhorted that the deceased should not be spared. After noticing them, the deceased tried to flee away. The first informant also ran towards Dena Bank lane and witnessed the occurrence. The accused Akash @ Chintya (A1), Amol More @ Vangya (A2), the applicant (A3), Abhirup Thorat (A4) and child in conflict with law, allegedly assaulted the deceased by means of sword scythe, knife and iron rod.

3c. After a few moments, the first informant saw Akash @ Chintya (A1) and his associates running back towards Netaji Chowk. Thereafter, the first informant went to the place where accused assaulted the deceased. The latter was lying in a pool of blood. Eventually, the deceased succumbed to the injuries.

4. Mr. Kashid, the learned counsel for the applicant, would urge that the applicant is entitled to be enlarged on bail on the ground of

parity as, by an order dated 15th April, 2024, this Court has released Kaivalya Shikhre (A5) on bail. Inviting attention of the Court to the supplementary statement of the first informant, Mr. Kashid submitted that, like the applicant, the role of assault by means of deadly weapons was also attributed to Kaivalya Shikhre. In addition, there is material to show that there was prior meeting of mind between Akash @ Chintya (A1) and Kaivalya Shikhre (A5) as is evident from the transcript of telephonic conversation. The learned counsel further submitted that the applicant has been in custody sine 17th September, 2021. The trial is not likely to conclude soon. Therefore, the applicant be enlarged on bail.

5. Mr. Naik, the learned APP, resisted the prayer for bail. It was submitted that there is a material difference in the role attributed to the applicant and that of Kaivalya (A5). The applicant was named in the FIR as one of the assailants by the first informant, who is an eye witness to the occurrence. Kaivalya (A5) was not named in the FIR and was implicated in the supplementary statement of the first informant and that was the reason for enlarging Kaivalya (A5) on bail.

6. I find substance in the submission of learned APP. In paragraphs No. 9 and 10 of the order dated 15th April, 2024 this Court recorded the reasons which weighed with this Court in

releasing Kaivalya (A5) on bail. They read as under:-

9] As regards the applicant- Kaivalya, it is necessary to note that on the very day of occurrence, co-accused namely Akash @ Chintya (A1), Amol @ Vangya (A2), Yash Rupvate @ Monya (A3), alongwith the child in conflict with law, were apprehended. It does not appear that, at that point of time, the identity of the applicant as one of the assailants emerged. The applicant was named as one of the assailants in the supplementary statement of the first informant recorded on 18th September, 2021. Undoubtedly, FIR is not an encyclopedia. However, in the case at hand, it appears, the first informant had opportunity to see the assailants at three stages. First, when the assailants came to Netaji Chowk armed with weapons and exhorted that they could find 'Gudya', the deceased. Second, the first informant claimed to have seen those assailants chasing and assaulting the deceased, who tried to flee away. Third, after perpetrating assault, the first informant claimed, the assailants ran back towards Netaji Chowk.

10] In this view of the matter, I find substance in the submission of Mr. Suryawanshi that the first informant had narrated the alleged occurrence in the FIR, in detail. Prima facie, the omission to name the applicant as one of the assailants cannot be said to be in consequential or immaterial.

7. In contrast, the applicant was specifically named, by the first informant in the FIR, as one of the assailants who perpetrated the assault on the deceased, armed with deadly weapons. Pursuant to the discovery made by the applicant, the weapon of offence i.e. iron rod and blood stained clothes of the applicant were also recovered. Thus, principle of parity does not apply.

8. It would be contextually relevant to note that there were as many as 24 injuries on the person of the deceased. Prima facie, it appears that the assault, armed with deadly weapons, was preplanned. The deceased was killed on a public street in a broad day- light. The sequence of events, prima facie, indicates

premeditation, and an element of conspiracy. Since the applicant was specifically named as one of the assailant in the FIR, which came to be lodged by an eye witness, almost instantaneously, a very strong prima face case can be said to have been made out against the applicant.

9. Thus, having regard to the brutal nature of the murderous assault, time and place of the occurrence and the manner in which the deceased was done to death, I am not inclined to exercise the discretion in favour of the applicant.

Hence, the following order.

ORDER

1] The application stands rejected.

2] 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 co-accused and the trial Court shall not be influenced by any of the observations made hereinabove.

(N. J. JAMADAR, J.)

