

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 943 OF 2024

Saif Ali Chand Shaikh

.Applicant

vs.

The State of Maharashtra

.Respondent

Mr. Aniket Nikam i/b. Mr. Amit Icham a/w. Mr. Dushyant Digamber,
Advocate, for the Applicant

Mr. Balraj B. Kulkarni, APP, for the Respondent – State

Mr. S. S. Ghag, PSI, Malwani Police Station, Mumbai present

CORAM : MILIND N. JADHAV, J.

DATE : 13.01.2025

P. C.

1. Heard Mr. Nikam, learned Advocate for the Applicant and Mr. Kulkarni, learned APP for the Respondent – State.

2. By this Application, Applicant seeks enlargement on bail in connection with C. R. No. 1434 of 2021 for the alleged offences punishable under Sections 302, 323, 504 and 506(2) of the Indian Penal Code registered with the Malwani Police Station, Mumbai.

3. Applicant in the present case is in prison since the date of his arrest i.e. 09.12.2021. He has spent three years and one months of incarceration.

4. Mr. Nikam, learned Advocate for the Applicant would submit that

though the Applicant is accused of Sections 302 r/w. 323, 504, 506 of the Indian Penal Code, the incident in question which occurred on 08.12.2021 as per Complainant's own version and the eye witnesses' statements recorded by prosecution would show that it occurred on the spur of the moment due to two precursor incidents immediately before the incident which were *prima facie* provocative and which possibly enraged the Applicant into committing the said incident. He would submit that commission of the said incident by the Applicant cannot be termed to be a "pre-meditated act" though unfortunately by virtue of the said act, the victim lost his life. He would argue for bail in favour of the Applicant on the ground of merits as also long incarceration of three years and one month in imprisonment.

5. Briefly stated the incident occurred on 08.12.2021 at about 10.00 p. m. when victim called Surendra Kumar was sitting outside his house and listening to loud music on the speaker of his tape recorder. One of the neighbour namely Applicant came to him and told him to reduce the volume of music which he was listening on his tape recorder. According to prosecution, because of the questioning of the Applicant to the victim, he retorted back by stating that he was listening to music in his house and asked the Applicant to remove himself from there. The victim also told Applicant that he will speak to

his aunt (Khala) and complain about him which enraged the Applicant and he started abusing the victim. This is the version of the Complainant who is wife of the victim who was at that time sitting inside the house and she overheard the conversation which happened near the door of the house. At this stage, it may be required to look into the witnesses' account namely the three eye witnesses to the incident apart from the complaint i. e. wife of the Applicant, two other eye witnesses are neighbours namely Smt. Vijayakumari Gautam and Omprakash Gautam. Both these eye witnesses have stated that there was verbal altercation of abuses traded between Applicant and the victim which they witnessed and that resulted in a scuffle between them and the Complainant and the victim's 16 year old son namely Shubham who was inside the house intervened and questioned the Applicant as to why he was abusing loudly. The Applicant got enraged and held his neck and attempted to throttle him at which point of time, the Complainant, Smt. Vijayakumari and Omprakash Gautam all three intervened and got Shubham released from Applicant's clutches. It is after this incident that the incident relating to demise of the victim occurred. The Applicant been enraged at the victim, held his neck from behind and in a swing pushed him to the ground. On the ground, there was a stone which was lying with which the victim got injured and lost

his life. Thus, from the above, it is seen that precursor incident to the main incident happened to be enragement of the Applicant when he asked the victim to reduce the volume of his tape recorder followed by the incident of holding and throttling the victim's son – Shubham's neck who was rescued by the eye witnesses which led to the incident in question.

6. I have perused the witness statements which are recorded by the Investigating Officer and appended from page No. 29 onwards. The witness statements which have been recorded by the Investigating Officer are referred to and relied upon by the learned APP, save and except statement of Smt. Vijayakumari Gautam which is at page No. 29 of the Application which states that when they heard a commotion and saw crowd gathered outside the house, they rushed to the spot and saw that the victim was lying. They then all lifted the victim and took him inside the house. They have stated that the victim's head was banged on a stone which was found below his head. The eye witness – Smt. Vijayakumari Gautam, however, describes the entire incident as a scuffle between the victim – Surendrakumar Gunar and the Applicant and states that she saw both of them abusing each other also having a scuffle (Maramari). Thus, *prima facie*, from the eye witness's account it is seen that the incident in question leading to death of victim is

preceded by two other incidents which enraged the Applicant into committing the act of swinging his hand at the victim leading to the victim's fall on the ground, injuring his head and losing his life. By no stretch of imagination, this can be called a pre-meditated act. Though learned APP would submit that there is one NDPS offence registered against the Applicant in the year 2016, but at that time, the Applicant was 20 years old. The antecedent in question, in my opinion, cannot be considered and linked to the incident in question. Primarily because *prima facie* the incident in question has occurred on the spur of the moment due to the scuffle between the Applicant and the victim which has been noted herein above.

7. In that view of the matter, considering the long incarceration of three years and one month of the Applicant and considering the material on record, the Applicant deserves to be enlarged on bail on the following terms and conditions.

O R D E R

- (i) The Applicant be enlarged on bail, on executing P. R. Bond in the sum of Rs. 15,000/- with one or two solvent sureties in the like amount;
- (ii) The Applicant shall not tamper or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(iii) The Applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(iv) The Applicant shall not enter the jurisdiction of the Malwani Police Station, Mumbai except for attending the dates of trial Court;

(v) The Applicant to co-operate with the conduct of the trial;

(vi) If there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

8. The Application is allowed in the aforesaid terms and is accordingly disposed of.

9. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

10. All concerned to act on the authenticated copy of this order.

(MILIND N. JADHAV, J.)