

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1843 OF 2024

Babalu Shenpat Shinde

.. Applicant

Versus

State of Maharashtra

.. Respondent

- Ms. Rupali Thosar with Mr. Deva L. Shinde i/b Mr. Raviraj Paramane, Advocate for the Applicant.
- Ms. S. M. Yadav, APP for State-Respondent.
- Mr. Tukaram Nagare, PSI, Turbhe Police Station, Present.

CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 31, 2025

P.C.:

1. Heard Ms. Rupali Thosar, learned Advocate for Applicant and Ms. S. M. Yadav, learned APP for Respondent – State of Maharashtra.

2. Applicant before me has filed Application under Section 439 of Code of Criminal Procedure, 1973 (for short ‘**Cr.P.C.**’) seeking Bail in connection with C.R. No.99 of 2022 registered with Turbhe MIDC Police Station, Navi Mumbai, registered under Sections 302, 506(2) read with Section 34 of Indian Penal Code, 1860 (for short ‘**IPC**’), Sections, 4/25 of Arms Act, 1959 and Section 37(1)(3) read with Section 135 of Maharashtra Police Act, 1951.

3. The name of the deceased-victim is Nitin. The first

informant is the brother of the victim. The first informant lodged a complaint on 13.04.2022 with the Turbhe Police Station stating that in the evening of 12.04.2022 at about 4.30 pm, when he had gone out to bring some snacks (Vada Pav), at that time, the deceased- victim was at his home and he was under the influence of Tadi. He has stated that when he returned at about 5.30 pm, he found a gathering of the crowd near his hut and his brother i.e. deceased victim Nitin was lying on the ground in an injured condition. He has stated that there were injuries on his head, ribs and hands and when he enquired with those present and who had gathered around him, he was specifically told by the crowd that the deceased-victim Nitin was hit by an unknown truck driver while crossing the road when he was going for fetching some water.

4. The said spot panchanama is at page No. 81 and it is seen that the victim was residing in a hut in a slum area adjacent and adjoining to the road. Accordingly, the first informant went to the police station and lodged the complaint on 13.04.2022. The FIR was registered against an unknown person under various provisions of IPC and the Motor Vehicles Act, 1988.

5. The learned Advocate for Applicant would submit that after one and half months of filing the above complaint, the first informant approached the police station and filed the supplementary statement

dated 24.05.2022. In that supplementary statement, the first informant stated that in the evening of the date of incident, applicant committed the crime of assaulting and resultantly causing death of the victim by using sharp weapons namely an axe and a sickle. That supplementary statement is appended at page No. 25.

6. By this time, the case of the prosecution rested on the basis of the complaint and the Medical report which was issued by Municipal General Hospital, which was prepared on the following date i.e. 13.04.2022.

7. Learned Advocate for the Applicant has drawn my attention to the said report and would argue that if the said report is perused, the nature of the injuries stated in column No. 17 of the post-mortem report would *prima facie* give credence to the fact that out of eleven injuries stated therein, save and except two injuries, nine injuries are on the parietal region and on the occipital region of the head and the post-mortem report states that probable cause of death was due to head injuries. The other two injuries are on the chest and on the right thigh, which is in the nature of lacerated wound of minimum dimension that can be seen.

8. In this very regard, she has drawn my attention to the letter dated 23.04.2022 which is appended at page No. 54 of the Application and would argue that the said letter is issued by the same Doctor 10

days after the issuance of the post-mortem report and in that letter a completely diametrically and contradictory stand has been taken.

9. On perusal of the said letter dated 23.04.2022, *prima facie*, it is unfathomable to believe that the same Doctor, who conducted the post-mortem could have written the said letter. On the face of the record, the said letter is clearly written by some other person in Marathi language. The person who has transcribed the said letter and his endorsement is not there. However, the said letter is bears the signature and stamp of the same Doctor.

10. Be that as it may, the contradistinction, in the said letter qua the post-mortem report is clearly evident. In this letter, the same Doctor has stated that injuries Nos. 8 and 11 appear to have been inflicted by a sharp weapon. Nothing prevented the said Doctor, who has described the 11 injuries in detail as appearing on the body of the deceased victim in detail in the post-mortem report while recording his opinion on the same to say so earlier. The opinion as to the probable cause of death of the victim is merely stated to be head injuries in the post-mortem report and nothing more.

11. In view of the aforesaid contradiction as also another facet which has been argued by the learned Advocate for the Applicant that there was a dispute in the family with respect to the daughter of the first wife of the victim, who went missing for some time due to which

there was a dispute between the family members.

12. Ms. Yadav, the APP for State-Respondent has placed the 164 Statement of the second daughter of the victim, which was recorded on 25.05.2022, wherein she has stated that on the date of the incident, the victim was in fact assaulted by the applicant and as well as all other family members including her father, stepmother, stepmother's brother and one another person. If this would have been true, prosecution would have investigated the same appropriately.

13. She has further argued that the axe and sickle have been recovered and the Applicant also has six antecedents recorded against his name.

14. The question before me is whether the second daughter of the victim namely Anjali, who has recorded her statement is correct or whether the statement given by those who had gathered outside the hut after the incident about the victim having been knocked down by a truck is correct is something which will have to be unearthed in the trial.

15. *Prima facie*, there is another material contradiction which is observed. The spot panchanama dated 13.04.2022 appended at page No.81 of the Application records that after the accident which occurred the victim was made to rest and sit in front of his hut by the passers-by for sometime before moving him to the hospital for treatment pursuant

to he being knocked down by an unknown truck. The accident is stated to have occurred between 04:30 and 05:30 p.m. on 12.04.2022. At page No.83 of the Application is the inquest panchanama. This panchanama records the time of death of the deceased at 22:50 hours on 12.04.2022. The remarks in the inquest panchanama records the fact that victim was declared dead while undergoing treatment on 12.04.2022 at 22:50 hours. This clearly shows that victim was alive from 05:00 p.m. to 22:50 hours. Thus if the supplementary report and charge-sheet is to be believed then there is no material placed on record to convince the Court that there was any reason that prohibited relatives of the victim who claimed to have seen the alleged assault on the victim by the Applicant at 05:00 p.m. on the same date. Thus the above dichotomy alongwith the issue pertaining to the post-mortem report delineated hereinabove persuades me to accept the case of the Applicant for enlargement on bail.

16. In view of the aforesaid suspect statements, the benefit of doubt will have to be given to the Applicant. Another aspect which impels me to consider the Application is long incarceration of Applicant for two years and eight months. Hence the Applicant is released on bail.

17. In view of the above, present Application is allowed in terms of prayer clause (a) 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.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 Saturday 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.

18. The aforesaid observations are *prima facie* on the basis of record of the case which has 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.

19. Bail Application stands allowed and disposed.

[MILIND N. JADHAV, J.]

Sayali Upasani

HARSHADA
HANUMANT
SAWANT

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by HARSHADA
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