

Ajay

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

CRIMINAL BAIL APPLICATION No.1951 OF 2024

Kiran Somnath Kale

.. Applicant

Versus

The State of Maharashtra

.. Respondent

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- Mr. Amrish R. Salunke a/w. Ms. Shraddha Shinde, Ms. Tanvi Gaikwad, Mr. Abhiram Venugopal, Mr. Durgesh Pandey, Mr. Sunilkumar Gupta, Mr. Nagesh Pawar, Advocates for Applicant.
- Ms. Savita M. Yadav, APP for State.
- Mr. Atmaram T. Kadam, PO Wadala Police Station – Present.

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CORAM : MILIND N. JADHAV, J.**DATE : MARCH 18, 2025****P. C.:**

1. This Application is filed under Section 439 of CrPC¹ seeking regular bail in connection with C.R. No.640 of 2022 registered with Wadala T.T. Police Station for offences punishable under Sections 302 r/w 34 of IPC² and Section 142 of the Maharashtra Police Act, 1951.

2. The case of the prosecution against Applicant is that he, by using a knife, inflicted injuries on the head and chest of the deceased which resulted in his death. Date of incident is 24.09.2022. Applicant was arrested on 30.10.2022, his period of incarceration is 2 years 4 months and 19 days.

1 The Code of Criminal Procedure, 1973.

2 The Indian Penal Code, 1860.

3. Mr. Salunke, learned Advocate appearing on behalf of Applicant would submit that the Applicant and deceased were engaged in a fight instigated by the deceased. He would submit that the deceased along with his accomplices Rohan and Sandy were assaulting the Applicant and that the deceased – Tushar was armed with a knife. He would submit that the Applicant, being overpowered by his assaulters and while exercising his right to private defence may have inadvertently inflicted injuries resulting in death of the deceased. He would draw my attention to the arrest panchanama of the Applicant to submit that Applicant had suffered severe injuries and was having 45 stitches on his left leg and 9 stitches on his head and was hospitalised for a considerable period in the interregnum of the incident and the date of his arrest. He would submit that the Applicant is regularly undergoing Medical Checkups and has been advised for surgery on his left leg. He would thus pray to the Court to allow the Application.

4. Ms. Yadav, learned APP appears on behalf of State. She would vehemently resist the Application as the offence is serious in nature.

5. Heard Mr. Salunke appearing on behalf of Applicant and Ms. Yadav, learned APP appearing on behalf of State and with their able assistance, perused the record of the case.

6. *Prima facie* there are three witness statements relied upon by the prosecution. Statement of Chirag Wagh (Brother of the deceased victim) was recorded after a period of 5 days of the incident. Statement of Vikas Pasi was recorded after 3 weeks and statement of Nagesh Kopul is recorded after 25 days of the incident. These statements are appended at page Nos. 44, 51 and 53 of the Application respectively and are recorded after substantial delay post incident. It is seen that 3 out of the 4 co-accused in the crime have been enlarged on bail. Record *prima facie* indicates that the Applicant had not premeditated the fight. He himself seems to be caught by surprise and was severely injured in the incident. Whether his acts allegedly leading to death of deceased would amount to Right to private defence or not is contended by learned Advocates on both sides. Be that as it may, his complicity in the crime can be appropriately adjudicated at the stage of trial where the Applicant would be in a better position to defend himself if released on bail. Applicant has no antecedents and is a young boy aged 24 years. He *prima facie* does not appear to be a threat to the society if released on bail. The circumstances of the case are such that no purpose would be served by elongating the custody of Applicant. His fate would be determined at the stage of trial. In the interregnum, he is entitled to be released on bail.

7. The Application is allowed in the following terms:-

- (i) Applicant is directed to be released on bail on furnishing PR. Bond in the sum of Rs.25,000/- 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.

8. 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.

9. Bail Application No.1951 of 2024 is allowed and disposed.

[MILIND N. JADHAV, J.]

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