

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 2147 OF 2024

Ghanshyam Magan Khakhrodiya .. Applicant

Versus

The State of Maharashtra .. Respondent

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- Mr. Ashok Mundargi, Sr. Advocate i/by Mr. Ashok R. Sutrale for Applicant
 - Mr. S.A. Karmakar, APP for State
 - Mr. Pradip Kale, PI, Borivali Police Station, Mumbai

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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 11, 2025

P. C.:

1. Heard Mr. Mundargi, learned Advocate for Applicant and Mr. Karmakar, learned APP for State.

2. Applicant - accused has filed the present Application for regular bail under Section 439 of the Code of Criminal Procedure, 1973 (for short, "**Cr.P.C.**") in connection with Crime No. 788/2023 registered with Borivali Police Station, Mumbai under Sections 302, 504 and 506 of the Indian Penal Code, 1860 (for short, "**IPC**").

3. Applicant and victim were known to each other. Applicant is a trader of Garlic in Borivali Vegetable Market and victim worked as an Hamal in the various shops of traders in Borivali Vegetable Market. Record shows that complainant and the victim were from the same

native place and were therefore also known to each other. The date of the incident is 13.12.2023. When the victim was attending some labour work on the date of the incident, Applicant came to know that the victim was instrumental in stealing his trade namely Garlic in which he was trading for the past few months i.e. 5 months and therefore he caught hold of the victim and beat him with his fists and kicks. There is no doubt that beating of the victim was extremely harsh.

4. Mr. Karmakar, learned APP would draw my attention to the postmortem report which is appended at page Nos. 63-69 of the Application to persuade me to consider four external injuries suffered by the victim and would submit that the mercilessness with which victim was beaten by the Applicant should not be lost sight of. He would persuade the Court to consider that the Applicant has taken law in his hand and instead of reporting the matter to police and getting the victim apprehended, he became the judge in his own cause and executed the punishment. He would therefore submit that considering the gravity of the offence and more specifically the offence being punishable under Section 302 of IPC amounting to murder of the victim, no leniency whatsoever should be shown to the Applicant by the Court.

5. I have heard learned Senior Advocate for Applicant and learned APP for State and with their able assistance perused the record of the case.

6. From the record of the case and the statements which are recorded of the various witnesses in the said vegetable market, it is *prima facie* seen that victim and the complainant were known to each other. The fact that victim was instrumental in stealing the trade of the Applicant namely Garlic led to the unfortunate incident. Various statements of the witnesses which are recorded refer to the incident. When the victim was apprehended by the Applicant and threatened and beaten by him, several persons intervened and persuaded the Applicant to let go the victim. The statements which are recorded clearly show one thing and that is the fact that Applicant was aggressive to such an incident on the date of the incident that he was not in a position to apply his mind to pardon the victim at all despite the intervention of other traders in the market as also the first informant Arshit Shaikh who was the co-labourer and friend of the victim. There can be no pardon for such an act of beating but while considering the bail, the Court will have to see as to why and how the act was committed, whether the act was premeditated or planned is one facet which the Court will have to consider especially in a case wherein the result is vital and someone has lost his life. There is no

material placed on record nor it is seen from the statements of witnesses recorded to show that the act of the Applicant was carried out with the intention to take the victim's life. Various statements of the persons recorded and appended from page No. 45 onwards to the Application *prima facie* show that the incident between Applicant and victim lasted for more than half an hour. It was also intervened by many persons. Statements of witnesses also show that Applicant was so angry for the reason that victim was carrying out theft for the past few months of his trade, that his anger reached its zenith and he was not in a position to listen to any person intervening. The victim succumbed to his injuries on the following day as he was found bleeding the next morning. The incident occurred between 7:45 p.m. and 8:15 p.m. on the previous day. Investigation is completed. My attention is drawn to Sr. Nos. 17 and 21 of the postmortem report which is at page No. 66 of the Application. Admittedly no weapon is used. The nature of the injuries as can be seen *prima facie* from Sr. No. 17 are four specific abrasions on the body of the victim. Naturally these abrasions are possibly external injuries which may have been caused due to the repeated fist and kick blows administered on the victim. Sr. No. 21 of the postmortem report however shows the presence of alcohol in the victim's blood. Final opinion as to the probable cause of death is not placed on record.

7. In the above circumstances and the observations made above and more specifically the fact that the Applicant has not premeditated the incident in question though it has led to the death of the victim, I am of the opinion that further incarceration of the Applicant is not required. Needless to state that appropriate strictures and conditions can be imposed on the Applicant in the interregnum until the trial is over.

8. 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 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 leave the State of Maharashtra without prior permission of the Trial Court. He shall deposit his passport, if any, within two weeks after being released on bail with the Trial Court;
- (v) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner;
- (vi) 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;
- (vii) Any infraction of the above conditions shall entail cancellation of this order.

9. It is clarified that the observations in this order are limited for the purpose of granting Bail only and I have not made any observations on the merits of the case.

10. Bail Application stands allowed and disposed.

[MILIND N. JADHAV, J.]

Amberkar

Digitally signed
by RAVINDRA
MOHAN
AMBERKAR
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2025.02.11
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