

Shabnoor

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

BAIL APPLICATION NO.3545 OF 2024

Kuldeep @ Bhola Mukesh Kajaniya ... Applicant
V/s.
State of Maharashtra ... Respondent

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Mr. Sanjeev P. Kadam, Senior Advocate a/w Varsha M.
Thorat i/b Prashant Raul, for the applicant.

Mr. Sagar R. Agarkar, APP for the State – respondent.

CORAM : AMIT BORKAR, J.

DATED : JUNE 25, 2025

PC.:

1. This is an application filed by the applicant under Section 439 of the Code of Criminal Procedure, 1973, praying for his release on regular bail in connection with Crime Register No.313 of 2023, registered with Ulhasnagar Police Station, for offences punishable under Sections 302, 307, 143, 144, 146, 147, 148, 149, 323, 504, 506 read with Section 34 of the Indian Penal Code, 1860.

2. As per the case of the prosecution, the informant was earlier working with one co-accused Nitin Kajaniya for cleaning cattle shed, and after leaving the said job, there was a grudge between them. On 22 May 2023 at about 4:00 a.m., while the informant and his friend Sunil Nikam were sleeping at the house of one

Vicky, the co-accused Nitin, along with the present applicant and one Aniket @ Chintu, came to that house. Co-accused Nitin allegedly gave a blow on the informant's head with an iron rod, followed by further blows on his hands and legs. The applicant and co-accused Chintu are alleged to have assaulted the informant with fists and kicks.

3. It is further the case of the prosecution that Sunil, the friend of the informant, suffered a head injury during the incident, which ultimately resulted in his death. One eyewitness Raviraj has given a statement attributing a joint role to the present applicant along with co-accused Nitin, Aniket, and Salman. He has also stated that these accused persons prevented the neighboring people from intervening and helping Sunil during the assault. It is alleged that due to fear, the neighbors ran away from the spot, and Sunil could not be rescued.

4. It appears from the record that the applicant had earlier moved an application for bail before the learned Sessions Court, which came to be rejected. Hence, this application is filed before this Court seeking bail.

5. Learned senior Advocate for the applicant submitted that the individual role attributed to the applicant is only of giving fist and kick blows to the informant, and not to the deceased. It is further submitted that even though the statement of eyewitness Raviraj indicates a joint role in the incident, no specific overt act is attributed to the applicant which directly led to the death of Sunil. He also pointed out that although the applicant has 11

antecedents, only three of them relate to offences against the human body, and the rest are not of serious nature. He therefore submitted that, considering the limited role, the applicant deserves to be released on bail.

6. On the other hand, the learned APP opposed the bail application. He submitted that the incident occurred on 22 May 2023, and the statement of eyewitness Raviraj recorded on 24 May 2023 clearly indicates that the applicant, along with other co-accused, jointly assaulted Sonu using wooden sticks and iron rods. Further, the applicant is also specifically named as one of the persons who actively discouraged and threatened the neighbors, preventing them from coming forward to help the victim. It is submitted that this act of obstructing others from helping Sunil was deliberate, and played a role in the fatal consequence that followed. Learned APP further submitted that the applicant is involved in 11 previous offences, and in light of the nature of the allegations, the application of Sections 149 and 34 of the IPC, and the gravity of the offence resulting in death, the applicant is not entitled to bail at this stage.

7. Upon careful perusal of the charge-sheet and the documents placed on record, it is seen that the incident took place in the early morning hours on 22 May 2023, where the informant and his friend Sunil were allegedly assaulted at the house of one Vicky. It is the case of the prosecution that the present applicant, along with co-accused Nitin and Aniket @ Chintu, went to the house where the informant and Sunil were sleeping and committed the act of assault.

8. The specific role of the present applicant as emerging from the statement of eyewitness Raviraj is that he was actively involved in the assault upon the informant and also took part in dissuading and threatening neighboring people from helping the victim Sunil, who sustained a head injury and ultimately succumbed to the same. Though the assault by the applicant may have been by way of fist and kick blows, the allegation of being part of an unlawful assembly armed with weapons and acting in furtherance of common object, cannot be brushed aside lightly. The doctrine of constructive liability under Sections 149 and 34 of IPC comes into play when the accused persons share a common intention or object and act in furtherance of the same.

9. It is further significant that the incident appears to be pre-meditated, as the accused persons came to the spot together and acted in a coordinated manner. The act of obstructing the neighbors from intervening, as stated by the eyewitness, is not a mere passive presence but a conscious and deliberate act to facilitate the commission of the offence. This conduct has serious implications and cannot be ignored at this stage.

10. It is also not in dispute that the applicant has 11 past criminal antecedents, out of which at least three pertain to offences against the human body. This reflects upon his criminal propensity and habitual conduct. The grant of bail in such serious cases involving charge under Section 302 of IPC is not to be considered lightly, especially when the applicant is shown to have participated in the incident as a part of a group that resulted in the loss of human life.

11. At this stage, this Court is not expected to go into a detailed appreciation of evidence, but the material placed before the Court is prima facie sufficient to indicate involvement of the applicant in the crime alleged, and the likelihood of tampering with witnesses or threatening the complainant cannot be ruled out considering his past conduct.

12. In view of the aforesaid discussion, this Court is of the opinion that the applicant has not made out any case for grant of bail. The seriousness of the offence, the manner in which the crime is alleged to have been committed, the specific role attributed to the applicant in the FIR and eyewitness statement, and his antecedents, all indicate that it is not a fit case for granting discretionary relief of bail at this stage.

13. Hence, the Bail Application stands rejected.

(AMIT BORKAR, J.)