

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3697 OF 2024

Shivprasad Ambika Jaisawal .. Applicant

Versus

The State of Maharashtra .. Respondent

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- Mr. Anirudh H. Yadav a/w Mr. Viraj Gharat, Mr. Anoop Pal & Mr. Nitin Hajare for Applicant
- Ms. Mahalakshmi Ganapathy, APP for Respondent - State

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CORAM : MILIND N. JADHAV, J.

DATE : MAY 05, 2025

P. C.:

1. Heard Mr. Yadav, learned Advocate for Applicant and Ms. Ganapathy, learned APP for Respondent - State.

2. Applicant - accused has filed the present Application for regular bail in connection with C.R. No. I-409/2024 registered with Pelhar Police Station, Dist. Thane for offence punishable under Section 302 of the Indian Penal Code, 1860 (for short, "**IPC**").

3. Applicant is arrested on 16.04.2024 and since then he is incarcerated in prison. The case of prosecution as emanating from record is that on 15.04.2024, Applicant had a verbal altercation with the victim and in a fit of rage, pushed the victim to the ground and thereafter inflicted fist and kick blows while victim was in an intoxicated and inebriated state and thereafter dragged him and

placed him on the nearby footpath. Victim thereafter did not show any movement, became unconscious and was shifted to hospital where he was declared dead on arrival.

4. Mr. Yadav would persuade the Court to consider the circumstances in which the incident had occurred. Same is narrated in the FIR lodged by wife of deceased victim. Prosecution in the process of investigation has recorded statements of 8 witnesses which are appended at page No. 71 onward of the Application. Statements of the witnesses are all recorded on 17.04.2024. I have perused the said statements and *prima facie* there is no variation or inconsistencies with respect to narration of facts by the first informant - wife of deceased victim and the 8 witnesses.

5. Ms. Ganapathy, learned APP would rely upon the CCTV footage description which is placed on record in the form of CCTV panchanama appended at page No. 44 of the Application. She would persuade me to consider the fact that even after the deceased victim became unconscious, he was pushed and kicked by Applicant and he inflicted fist and kick blows on him. She would submit that heinousness of the crime in question is evident since in that physical state of the victim, Applicant did not show any mercy to him and caused injuries to his vital parts. She would therefore persuade the

Court to consider the fact that being indicted in a grievous offence, Applicant should not be released on bail.

6. I have heard the rival contentions of learned Advocates appearing for the parties and with their able assistance perused the record of the case.

7. *Prima facie* it is seen that on the date of the incident at about 11.00 p.m. in night, the victim in an intoxicated and inebriated state of mind was returning home when he was confronted by his wife and persuade by her to return home. However victim did not pay heed to her request and instead he desired to lay down and sleep in the veranda of a nearby temple called "*Vindhyavasini Temple*" and attempted to sleep at that place. Applicant before me is a fruit vendor who for the past several years is hawking his fruit cart immediately outside the said temple near the veranda. Applicant looking at the intoxicated and inebriated state of victim shouted at him and asked him not to sleep in the veranda of the temple and instead asked him to go away. Victim did not take the reprimand of Applicant kindly and instead retaliated back by asking Applicant whether the place belonged to his father. Verbal altercation ensued between them and admittedly as confirmed by witnesses whose statements are recorded, victim was in an inebriated state and quarrelled with Applicant. After sometime wife of victim also persuaded the victim not to continue

with the quarrel and instead come home with her which he refused to do so and instead insisted on sleeping in the veranda of the temple. The verbal altercation between Applicant and victim reached a point where Applicant in a fit of rage pushed the victim on the ground. Thereafter Applicant inflicted fist and kick blows on him and dragged him to the nearby footpath and let him remain there. On reading the CCTV footage panchanama, it is *prima facie* comprehended that act of Applicant in view of the reasons above for the incident to occur and the altercation which ensued between them cannot be termed to be pre-meditated or pre-planned act and there was no motive or intention of Applicant to kill the victim. Victim was already in an inebriated state and therefore act of dragging the victim after pushing him to the ground was to remove him physically from the place near the temple and place him at distant place on the footpath.

8. I have perused the statements of witnesses and on perusal of the same, it is *prima facie* seen that there is no deviation whatsoever from what is stated by wife of victim who is the first informant and what is delineated herein above. Even though, learned APP has vehemently argued that act of Applicant led to the death of victim but on seeing the medical report, it is *prima facie* seen that death of victim has occurred due to hemorrhagic shock due to splenic injury and intracranial hemorrhage which can also occur due to the involuntary

fall of the victim having being pushed when he was admittedly in an intoxicated state. However on overall consideration and reading the prosecution case as emanating from the record and the chargesheet, it is seen that Applicant had no intention to commit the murder of the victim. The act of the Applicant happened on the spur of the moment due to the ensuing quarrel which escalated because of victim refusing retaliating in an intoxicated state to go away from the spot and as endorsed by the witnesses. In that view of the matter, I am of the opinion that Applicant can be enlarged on bail considering his role and the fact that the trial in the present case would take a long time to complete and Applicant having made out a case for grant of bail. Bail Application is allowed 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 is permitted to furnish provisional cash bail of Rs. 25,000/- for his release immediately and file undertaking that he will provide one or two sureties in the like amount of Rs. 25,000/- within a period of four weeks after his release which shall be accepted by the Trial Court. Applicant shall provide sureties as directed;

- (iii) 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;
- (iv) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;
- (v) 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;
- (vi) 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;
- (vii) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (viii) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner; and

(ix) 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.

9. 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.

10. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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by RAVINDRA
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