

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3729 OF 2024

Vikas Muralidhar Raut

.. Applicant

Versus

State of Maharashtra

.. Respondent

.....

- Mr. Santosh H. Chari for Applicant
- Mr. Hitendra J. Dedhia, APP for Respondent - State
- Mr. S.K. Ghuge, PSI, V.P. Road Police Station

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 3, 2025

P. C.:

1. Heard Mr. Chari, learned Advocate for Applicant and Mr. Dedhia, learned APP for Respondent - State.

2. Applicant - accused has filed the present Application for regular bail under Section 439 of the Code of Criminal Procedure, 1973 in connection with C.R. No. 256/2024 registered with V.P. Road Police Station for the offences punishable under Sections 302, 504 & 506 r/w 34 of the Indian Penal Code, 1860 (for short, "**IPC**").

3. Applicant is arraigned as accused No. 1 in the present crime. He is 62 years old. Accused No. 2 is his son Vipul. They are indicted for committing murder of their neighbour Mukesh during an altercation which resulted in a fist fight. The Applicant resides in Flat No. 103,

whereas Mukesh resides in Flat No. 101 on the first floor of building called Parijat Sadan in South Mumbai.

4. On the fateful day of the incident i.e. on 02.05.2024 between 6.00 pm & 7.00 pm in the evening, a series of incidents occurred. They are emanated from the witness statements recorded by the prosecution as also the statement of the first informant. First informant is the wife of deceased victim Mukesh. *Prima facie* there is a clear dichotomy in the FIR statement and the witness statements about the motive and precursor incidents leading to the main incident. Unfortunately a life has been lost. Though it is the case of prosecution that accused Nos. 1 and 2 both are responsible for the death of victim and so is the charge of first informant in her statement appended at page No. 43 of the Application, however when the same is juxtaposed with various witness statements appended to the Application from page No. 67 onwards and upto page No. 93 of the Application, it is *prima facie* seen that there are several discrepancies as also contradictions. One of the main statement recorded by prosecution of an alleged eye witness according to prosecution case is that of the son of the victim which is appended at page Nos. 69-70 of the Application. Though according to prosecution case, the incident occurred due to the victim having been questioned about keeping the bicycle of his son inside the pump room of the building and its

removal therefrom by the Accused No.2, it is *prima facie* seen that it is not the real reason as alleged by first informant in her statement which is *prima facie* contradicted by the statement of her own son as also other witness statements. Statement of the son of the victim *prima facie* does not even talk about any of the precursor incidents which have been narrated by the first informant in her complaint. Rather he has stated that he had himself removed his cycle at 6.00 pm in the evening from the pump room and he went for ride to get one of the handle bar of the cycle repaired and returned back only at 6.45 pm when he saw a verbal altercation going on between the accused No. 2 and his father on the ground floor of the building. Insofar as the role of present Applicant is concerned, even as per the prosecution case, the altercation was initially between accused No. 2 and victim and it was only after some time that present Applicant intervened. According to the learned APP, considering the seniority and age of Applicant, he ought to have intervened to separate his son during the altercation. However prosecution's case is that even Applicant actively participated in the assault by inflicting fist and kick blows alongwith Accused No.2 on the victim. Though this is the prosecution case according to the statement of first informant, none of the witness statements *prima facie* supports the contention that Applicant was seen by any of them to have inflicted fist and kick blows since all

statements rather only two statements *prima facie* carve out the role of accused No. 2 for having inflicted kick and fist blows on the victim by which time the altercation has escalated into a fight. Be that as it may considering the contradictions in the statement of the first informant *qua* the statements of the witnesses which are recorded without delineating any opinion on whether the same is an exaggeration or otherwise it will be the duty of the prosecution to prove the same in trial. The role of the present Applicant in the incident is that he arrived at the incident spot after the altercation and incident between accused No. 2 and the victim started sometime ago cannot be *prima facie* said to be such that he participated in the alleged assault. Needless to state that prosecution can prove complicity of the Applicant and his role in trial on the basis of evidence. The real reason for the altercation which took place between accused No. 2 and deceased victim comes out in the witness statement of one Ms. Priyanka Sant, wife of the Secretary of the Building Society who had asked the removal of the cycle from the pump room. When the victim Mukesh learnt about it, he took objection to keeping of other things inside the pump room. *Prima facie* it is also seen that the said Ms. Sant has filed an NC Complaint against the victim because of the precursor incident having occurred. It is seen that in the altercation between Ms. Sant and the victim, the accused No. 2 as a neighbour initially

intervened and later on he was also joined by the present Applicant - his father since the said intervention turned into a verbal altercation leading to threats, abuses and a fist fight. Hence, in view of the *prima facie* role of Applicant having been considered on the basis of the witness statements recorded by prosecution, I am inclined to release the Applicant on bail.

5. Considering the aforementioned *prima facie* dichotomy and Applicant's role, 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.

6. 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.

7. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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