

VRJ

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

BAIL APPLICATION NO.3782 OF 2024

Manoj Suresh Sakpal ... Applicant

V/s.

The State of Maharashtra ... Respondent

VAIBHAV
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Mr. Manoj Mohite, Senior Advocate with Ms. Priyanka H. Chavan, and Mr. Raju Suryawanshi for the applicant.

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

Mr. Datta Patil, API, Tulinj Police Station, Nalasopara (East), is present.

Mr. Mangesh Nawde, PSI, Vitthalwadi Police Station, is present.

CORAM : AMIT BORKAR, J.

DATED : JULY 17, 2025

P.C.:

1. By the present application filed under Section 439 of the Code of Criminal Procedure, 1973, the applicant seeks regular bail in connection with Crime Register No. I-574 of 2023, registered with Tulinj Police Station. The offences alleged against the applicant are punishable under Sections 302, 120(B), 386, 201, and 34 of the Indian Penal Code, 1860 (for short, "IPC").

2. As per the case of the prosecution, the applicant and the co-accused, namely Mangesh Chavan, were both serving as police constables and were posted at the Local Crime Branch, Vasai Unit. The incident in question occurred on 23rd July 2018 at about 2:30

p.m. It is alleged that while the applicant and co-accused were proceeding towards their office on a motorcycle, they noticed the deceased, Jogindra alias Govind Rana, in the company of one Sijin Gopinathan alias Sachin Nair. At that time, both the applicant and the co-accused allegedly approached them and caught hold of Govind from behind. Upon being so restrained, Govind is stated to have pushed the motorcycle and tried to flee towards Radha Nagar. Both the accused chased Govind.

3. During the chase, it is alleged that Govind took out a knife from his waistband and attacked one Manoj Sakpal, injuring his hand. Thereafter, Manoj is stated to have released his grip on Govind. At this juncture, the applicant is said to have fallen on the ground, and Govind allegedly attempted to assault the applicant with the knife. To protect the applicant, co-accused Mangesh warned Govind and asked him to surrender. However, Govind allegedly proceeded to assault Mangesh as well and injured his left forearm. In response, Mangesh reportedly fired a bullet at Govind's leg. Despite being shot, Govind allegedly continued to charge towards Mangesh with the knife, upon which Mangesh fired a second bullet, causing Govind to collapse. He was taken to the hospital, where he was declared dead.

4. Learned Senior Advocate appearing for the applicant submitted that the applicant has been falsely implicated and that the charge-sheet does not disclose any material suggesting a conspiracy. It is submitted that the statements of the witnesses, especially those recorded after formation of the Special Investigation Team (SIT), indicate that the deceased had indeed

attacked with a knife, first on the shoulder of one person and thereafter towards the applicant and co-accused. It is emphasized that the applicant did not carry any firearm and was not the one who fired any bullet. Furthermore, no overt act is attributed to him in the statements of any witnesses. The post-mortem report reveals that the cause of death was due to gunshot injuries. It is further argued that no witness has stated that the applicant had provoked or instigated the co-accused Mangesh to fire at the deceased. On the contrary, the medical record supports the version that the applicant himself had sustained injuries inflicted by the deceased. Thus, it is contended that the applicant cannot be held liable under Section 34 IPC merely on the basis of his presence, as there is no material to show common intention to kill.

5. On the other hand, learned APP opposed the bail application and submitted that the applicant and co-accused Mangesh have jointly committed the murder of the deceased. He submitted that the true facts of the incident came to light only after this Court passed an order in Writ Petition No. 3468 of 2018, whereby a fresh investigation was directed. During the course of such investigation, it surfaced that the deceased had not used any knife during the incident, contrary to what was claimed earlier. It was further submitted that the CCTV footage obtained does not support the claim of self-defence. It is pointed out that neither the applicant nor Mangesh appeared to have sustained any visible injuries at the time of the incident. Additionally, two of the four eyewitnesses have specifically stated that the knife allegedly found at the scene did not bear any bloodstains, and that the clothes of the applicant

were also clean and had no visible signs of blood. In such circumstances, it is contended that the plea of self-defence is not tenable. The learned APP further submitted that release of the applicant on bail may weaken the prosecution case and may also lead the co-accused to seek bail on grounds of parity. Hence, he urged that the bail application be rejected.

6. Having considered the rival submissions and upon perusal of the material on record, this Court is of the considered view that the applicant deserves to be enlarged on bail for the following reasons.

7. The charge-sheet and statements of the witnesses do not attribute any specific overt act to the present applicant in the commission of the alleged murder. There is no allegation that the applicant was in possession of any weapon, much less that he used the same to cause death of the deceased. The firearm was used by co-accused Mangesh Chavan, and the postmortem report confirms that the cause of death was due to bullet injuries. In such circumstances, prima facie, the applicant appears to be uninvolved in the actual act which caused the death of the deceased.

8. The essential ingredient for attracting Section 34 of the Indian Penal Code is the existence of a common intention amongst the accused persons to commit the particular offence. The provision does not require the act to be committed jointly, but it mandates that the act must be done in furtherance of a shared intent.

9. In the present case, after carefully examining the charge

sheet, the statements of the witnesses, and other material placed on record, this Court finds that there is no prima facie material to suggest that the present applicant shared any common intention with co-accused Mangesh to commit the offence of murder. It is pertinent to note that the role attributed to the applicant is that of being present at the spot and having been assaulted by the deceased. There is no allegation that he was in possession of a weapon, nor is there any evidence to show that he exhorted, instigated, or aided the co-accused in firing the fatal shots. In fact, the firearm was used solely by the co-accused Mangesh, and the ballistic and postmortem reports corroborate this fact.

10. Similarly, in order to attract the charge under Section 120-B IPC, the prosecution must prima facie establish the existence of an agreement or meeting of minds between two or more persons to commit an illegal act. Conspiracy is generally proved by circumstantial evidence, but such evidence must lead to a clear inference of a pre-arranged plan. In the present matter, there is no such material brought on record to establish that the applicant and co-accused had entered into a prior agreement or conspiracy to eliminate the deceased. The prosecution has not placed any call data records, messages, prior meetings, or any conduct indicating premeditated conspiracy.

11. Mere presence at the scene of offence, or the fact that he was working in the same police unit as the co-accused, cannot by itself be a ground to infer common intention or conspiracy. Law is well settled that suspicion, however strong, cannot substitute proof. In the absence of any direct or circumstantial evidence demonstrating

concert or pre-plan, this Court finds no justification to fasten vicarious liability on the applicant under Section 34 or Section 120-B IPC, at this stage.

12. The apprehension expressed by the learned APP that release of the present applicant may lead to other co-accused seeking benefit of parity is misplaced. Each bail application must be decided on its own facts and role attributed to each accused. The role of the applicant herein stands on a different footing from that of the co-accused who actually fired the bullets. Denial of bail on such speculative grounds would not be justified.

13. It is not the case of the prosecution that the applicant has any criminal antecedents. The incident is of the year 2018, and the charge-sheet has already been filed. The applicant has been in custody for a considerable period. The possibility of trial being concluded in the near future also appears remote, considering the nature of prosecution witnesses and the volume of evidence.

14. It is not the case of the prosecution that the applicant is likely to abscond or tamper with evidence. Being a member of the police force, he has roots in society and is unlikely to flee. Suitable conditions can be imposed to ensure his presence during trial.

15. Therefore, taking an overall view of the facts, the nature of allegations, and the material placed on record, this Court is of the prima facie opinion that the ingredients to invoke Section 34 or 120-B of the IPC against the applicant are not made out in the present case. This becomes a relevant consideration while deciding the applicant's entitlement to bail.

16. In view of the above discussion, this Court is of the opinion that a case for grant of bail is made out.

17. Accordingly, the applicant is directed to be released on bail in connection with Crime Register No. I-574 of 2023 registered with Tulinj Police Station for offences punishable under Sections 302, 120(B), 386, 201, and 34 of the IPC, on furnishing personal bond of ₹50,000/- (Rupees Fifty Thousand only) with one or two solvent sureties of the like amount, subject to the following conditions:

(i) The applicant shall not tamper with the prosecution witnesses or evidence in any manner.

(ii) The applicant shall cooperate with the trial and shall regularly attend the proceedings before the trial Court.

(iii) The applicant shall not leave the State of Maharashtra without prior permission of the trial Court.

(iv) The applicant shall furnish his permanent address and mobile number to the Investigating Officer and shall keep the same updated.

18. It is made clear that the observations made herein are only for the purpose of considering the bail application and the trial Court shall not be influenced by any of these observations while deciding the case on merits.

19. The application is therefore stands allowed.

(AMIT BORKAR, J.)