

Ajay

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

CRIMINAL BAIL APPLICATION NO. 3838 OF 2024

Rahul Kanhaiya Kevat	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

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- Mr. Viral Mukte a/w Mr. Arun Rajput, Advocates for Applicant.
 - Mr. Balraj B. Kulkarni, APP for Respondent – State.
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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 03, 2025.

P.C.:

1. This is an Application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 seeking Regular Bail in connection with C.R.No. 162 of 2024 registered with Deonar Police Station for offences punishable under Sections 307, 323, 324, 385, 504 and 506 (2) read with Section 34 of the Indian Penal Code, 1860 (for short 'IPC') read with Sections 37(1)(a) and 135 of the Maharashtra Police Act, 1951. Applicant is arraigned as Accused No. 1. He is arrested on 08.04.2024 and he is incarcerated for almost a year.

2. Gist of prosecution case is that on 06.04.2024 at about 11:30 p.m. First – Informant met his cousin brother namely Sachin who is also one of the victim in the alleged crime. It is prosecution case that while they both were talking on the road near Shivaji Nagar, Govandi,

accused No. 2 approached First -Informant's brother and demanded Rs. 1000/- from him to which he denied. However after sometime Applicant alongwith other co-accused reached the spot and confronted the brother over his refusal to pay Rs. 1000/- and assaulted him with kick and fist blows. It is prosecution case that one of the co-accused inflicted a stick blow on the brother's head. However when the First-Informant intervened to save his brother from further attack, Applicant pulled out a knife and inflicted a fatal blow on his back and also inflicted a knife injury on his brother's neck. Thereafter they were shifted to the hospital for treatment and subsequently FIR was registered by the First - Informant.

3. Mr. Mukte, learned Advocate for the Applicant would submit that Applicant is a young offender aged about 19 years old who in order to aid and assist accused No.2 in the scuffle which ensued with the First – Informant admittedly used a knife to inflict a blow on First – Informant's back. On the issue of motive, he would submit that the incident in question occurred due to a verbal brickbat between First – Informant and his brother on one hand and accused No.1 on the other hand who then summoned his friends including present Applicant and they all joined in which further escalated into a physical altercation and in the said altercation Applicant inflicted the fatal blow in the spur of the moment.

3.1. He would submit that the weapon used in the alleged crime is a common kitchen knife which further raises doubts on the prosecution case of premeditation. He would submit that *prima facie* there is no pre-meditation on the part of the Applicant and on perusal of chargesheet no case of pre-meditation is made out against the Applicant. He would draw my attention to the Medical certificate appended at page No. 69 of the Application which records that the injury suffered by the First – informant on his back is a simple injury. He would submit that there are in all 4 accused persons involved in the alleged crime however the other 3 accused persons have been released on bail by the Sessions Court. Hence he would persuade the Court to consider the Applicant's case on the ground of parity.

3.2. He would also persuade me to consider the age of the Applicant being 19 years old. He would submit that investigation is complete, chargesheet has been filed and on 06.04.2024 recovery of the alleged weapon i.e. knife is made at the instance of the Applicant and no further recovery is left to be made. He would submit that considering the age of the Applicant his further incarceration in prison would possibly lead him unto the criminal path. He would submit that considering Applicant's age there is every likelihood that if he is enlarged on Bail, he would get a realistic chance to reform himself rather than keeping him in prison which would amount to a punitive and retributory punishment pending trial. Hence he would urge the

Court to allow the present Application.

4. Mr. Kulkarni, learned APP for Respondent – State would vehemently oppose the arguments made by Mr. Mukte. He would submit that act of Applicant is heinous in nature. He would submit that there are two eye – witnesses to the alleged incident. He would submit that Applicant inflicted a fatal blow with a knife on the vital part of both the victim which clearly reflects the intention of the Applicant to cause death.

4.1. He would submit that Applicant cannot claim ignorance of the consequences of his actions, as the weapon used (knife), the intensity of assault, and injury caused all establish that it was not an accidental or minor scuffle but a violent and lethal attack. He would submit that Applicant has a one criminal antecedent and hence the possibility of him re-offending himself cannot be ruled out. He would submit that if released on bail Applicant can influence and harm First-Informant. He would submit that Applicant is a threat to Society and hence he would urge the Court to reject the Application.

5. With the able assistance of the learned Advocates I have perused the record of the case.

6. It is *prima facie* seen that the incident occurred due to a verbal altercation which escalated into a physical scuffle and fight and most importantly it happened on the spur of moment without any

premeditation on the part of Applicant. *Prima facie* the motive of animosity between the parties is clearly evident which led to the unfortunate incident. Upon perusal of the Medical certificate appended at page No. 69 of the Application it is seen that the injury sustained by the First - Informant is simple injury hence does not *prima facie* establish an intention to kill. The medical record indicates a singular blow and there is no evidence of repeated assault or any premeditated attack. It is seen that investigation is completed, chargesheet has been filed. No further recovery is to be made at the instance of the Applicant. However the commencement and conclusion of trial in the near foreseeable future is doubtful. In this regard the key question is whether the Applicant's further incarceration considering his young age is justified, overriding his right to speedy trial and liberty?

7. It is settled law that a Court while deciding a Bail Application has to keep in mind the principal rule of bail which is to ascertain whether the Accused is likely to appear before the Court for trial. There are other broad parameters also like gravity of offence, likelihood of Accused repeating the offence while on bail, whether he would influence the witnesses and tamper with the evidence, his antecedents are required to be considered in such cases.

8. The Supreme Court in a plethora of judgements have discussed the rights conferred by Article 21 qua grant of bail and that

such rights cannot be taken away unless the procedure is reasonable and fair and in cases where there is unreasonable delay in trial it would undoubtedly impact the rights of an undertrial.

9. Considering Applicant's age and if he is enlarged on bail Court is hopeful that Applicant's family will undoubtedly do their duty to make every effort and attempt to reform and aid the Applicant in leading a reformed life while on bail rather than keep him in prison and expose him to criminal outlook and life in prison. However on the flip side, if a chance is given to the Applicant because of his young age by enlarging him on bail, there is a possibility that he will be remorseful and repent in retrospect. This is a chance required to be taken by the Court because punishment has to be believed to be inflicted for a reformatory result rather than being punitive in nature.

10. Undoubtedly the trial will determine the punishment for the offence. While considering Bail Application in such facts, Court feels that reform and rehabilitation of the under trial accused needs to be considered especially when age of the accused is young so that the accused gets an opportunity / or is given an opportunity to reform, rehabilitate and earn his livelihood honorably from the perspective of social integration. This is a chance which the Court must take considering the young age of accused. By considering this Court is not stamping approval of any of the actions of Applicant regarding the

crime in question. Court is also equally conscious of the offence. The age of the Applicant is very young. If the Applicant is incarcerated in prison further, there is every possibility that he might loose faith in the institution and society at large and may tread the path of criminality or would waste his life. Incarceration in prison statistically shows that it exposes many youth to abuse.

11. There are several harms of incarceration which are inflicted disproportionately on the youth. This is the reason why Court feels that any / every semblance of a chance towards a reformatory approach in punishment should be adopted, especially in the case of young offenders. Hence every opportunity or to that extent risk should be constructively taken by the Court in the case of young offenders – accused before committing such accused to further custody and give such accused an opportunity to become a good citizen in the Society. These observations are only in the view of the young age of the Applicant before me and it is only a means to explore an alternative to incarceration so that the Applicant can become a good citizen.

12. Considering the aforementioned facts of the present case, other 3 co-accused persons released on bail by the Sessions Court further persuades me to consider Applicant's case on the ground of parity also. Applicant's incarceration for almost a year in prison considering his young age is likely to worsen his likelihood of success

in every sphere of society and it will expose him to abuse. Hence, I am of the opinion that Applicant be released on bail.

13. Bail Application is allowed on 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) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;
- (iv) Applicant shall attend the trial Court on first Monday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Monday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next

working day;

- (v) 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;
- (vi) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (vii) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner;
- (viii) 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;
- (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.

14. It is clarified that the above 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 and the trial shall be adjudicated

on the basis of the evidence led by parties uninfluenced by the present order and strictly in accordance with law.

15. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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