

Ajay

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

BAIL APPLICATION NO. 4384 OF 2024

Amjad Riyaz Khan

.. Applicant

Versus

State of Maharashtra

.. Respondent

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- Ms. Shifa Khan i/b Mr. Khan Abdul Wahab, Advocates for Applicant.
- Mr. Hitendra J. Dedhia, APP for Respondent No.1 – State.

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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 18, 2025

P. C.:

1. This Bail Application is filed by Applicant arraigned as accused No.1 under Section 439 of CrPC¹ seeking Regular Bail in connection with C.R. No. 544 of 2023 registered with Nerul Police Station, Mumbai for offences punishable under Sections 302, 351 read with 34 of IPC² along with Sections 4 and 25 of Indian Arms Act, 1959 and Sections 37 and 135 of Bombay Police Act, 1951.

2. Date of incident is 26.11.2023, FIR is filed on 27.11.2023 by First Informant – Friend of deceased victim. Apart from Applicant, the other three Accused persons are his three sons namely Accused No.2 – Sameer Amjad Khan, Accused No.3 – Shoib Amjad Khan and Accused No.4 – Danish Amjad Khan, who is a Juvenile and being tried

1 Code of Criminal Procedure, 1973

2 Indian Penal Code, 1860

separately. Name of victim is Yuvraj Singh, He and First Informant were ambulance drivers. On the day of the incident, they received a phone call to pick up a dead body from D.Y. Patil Hospital in Nerul and thus they proceeded over there. Prosecution case is that when they neared D.Y. Patil Hospital Applicant waved his hand to stop the ambulance. The First Informant who was driving the ambulance saw the Applicant – Accused No.1 and stopped the ambulance. When the ambulance halted, Accused No.1 came on the left side front cabin door of the ambulance, opened it, dragged the victim – Yuvraj Singh out of the Ambulance inflicted a slap on his face while abusing him and thereafter Accused No.2 and Accused No.3 who were with him took over. Accused No.2 inflicted a knife blow and Accused No.3 inflicted a blow with a glass box on the body of Yuvraj Singh and also beat him with fist and kick blows. Accused No.4 went over to the driver's side to force the First Informant out of the Ambulance but since he did not come out, Accused No.4 with a bamboo stick smashed the front windscreen of the ambulance by inflicting repeated blows. Injured victim was taken to the hospital where he was declared dead. Postmortem report reveals that he died due to Hemorrhage and shock suffered by multiple stab injuries and head injury. It is also alleged that Accused No. 3 used bamboo stick to inflict blows on the victim and smashed a glass box on his head during the scuffle.

3. Prosecution case is that all 4 Accused with a common intention to kill the victim Yuvraj Singh conspired to accost and assault him, used dangerous weapons and caused his death in cold blood in the presence of eye witness account of witnesses whose statements are recorded. However role of all 4 Accused is precisely stated by the eye witnesses and there is no digression at all.

4. Ms. Khan, learned Advocate appearing for the Applicant-Accused No.1 has persuaded me to consider the role of Applicant in the offence on the basis of statements in the FIR by First Informant Gyaneshwar Babasaheb Nakade appended at page No.44 and statement of eyewitness Avinash Balraj Trivengadam appended at page No.97 to consider the present Bail Application. After drawing my attention to the aforesaid two statements and reading them she would submit that both the eye-witnesses have stated that Applicant-Accused No.1 pulled out Yuvraj Singh (victim) from the ambulance and inflicted one slap blow with his hand and abused him and thereafter the other Accused persons namely his sons took over. She would submit that apart from infliction of one slap blow from his hand there is no other act described by the eyewitnesses and role attributable to the Applicant. Next she would argue that if statement of eye-witness Avinash Balraj Trivengadam is perused, it will show that, insofar as Applicant is concerned, allegation of prosecution that entire offence is

pre-meditated and planned is completely belied. She would state that the said witness along with another friend was invited by Applicant a few hours before the incident happened for a party to be given by Applicant on the successful completion of the pharmacy course by his elder son Sameer and three of them were proceeding in a rickshaw from Govandi towards D.Y. Patil Hospital area in Nerul. At that time Applicant received a phone call presumably from his son – Accused No.2 and he chose to go to D.Y. Patil hospital area in Nerul, stopped the rickshaw over there and told the witness that he will take 5 minutes to return since there was a matter to be resolved. Next she has argued that Applicant went to the incident spot and stopped the ambulance and the incident happened which was noticed by the said witness. Learned Advocate for the Applicant would argue that therefore taken at its highest, role attributable to Applicant in the offence is of causing assault by his hand i.e. slapping the victim which cannot lead to his death. In this regard she has persuaded me to see the Postmortem Report appended at page No.110 of the chargesheet and would submit that deceased victim has suffered multiple stab injuries on his body and wound injuries also leading to his death which cannot be attributable to the slap injury inflicted by the Applicant – Accused No.1. Hence she would persuade the Court to

consider the Bail Application of Applicant and allow the same in the interest of justice.

5. Learned APP, Mr. Dedhia has vehemently objected to the grant of Bail to the Applicant. He would submit that all 4 Applicants belong to the same family and conspired to kill the victim Yuvraj Singh due to enmity between them. From the chargesheet, he would persuade me to note that Accused No.1 was running a business of a food stall (Anda Bhurji Stall) on the road outside D.Y. Patil Hospital in Nerul and a few meters away, the victim Yuvraj Singh used to park his vehicle over there. Though there is not much elaboration in the various statements that are recorded regarding motive of crime, it appears that there was enmity between the victim and Accused No. 3's business of Anda Bhurji Stall which he was operating in the area outside D.Y. Patil College. Mr. Dedhia would vehemently submit that statement of the witness Avinash Balraj Trivengadam, if perused by the Court, will show the gruesome nature in which the victim Yuvraj Singh has been assaulted by the 4 Accused. He would submit that FIR lodged by Gyaneshwar Nakade Babasaheb also endorses the gruesome nature in which the victim was assaulted. He would state that attack by the Accused persons was pre-meditated and planned since they were armed with weapons which were used in the attack to assault the victim, cause multiple stab injuries on the victim's body, inflict multiple

blows with a stick on his head and smash a glass box on his head and as such Applicant is dis-entitled for bail in such a serious offence classified to be an offense against the society at large. He would state that present Application is a ploy by Accused No.1 to seek bail so that if he is granted bail, Accused No.2 and Accused No.3 will also seek bail on parity. He would persuade the Court to consider the heinous nature of crime committed on a public place i.e. road and reject the Application.

6. I have heard the learned Advocates at the bar and perused the record of the case. From the record it is seen that Complainant has identified Applicant – Accused No.1 as the assailant who slapped the victim and who had stopped the ambulance and dragged him out. Apart from statement of Complainant – First Informant, statement of eyewitness Avinash Balraj Trivengadam corroborates the version of the First Informant. *Prima facie* role of Applicant is of pulling the victim out of the ambulance and inflicting a slap blow on his face with his hands. Thereafter according to eyewitness account, it is seen that Accused No.2 inflicted several multiple blows with the weapon i.e. knife on the victim's body which is corroborated by the Postmortem Report. It is also seen that Accused No.3 inflicted several blows with a bamboo stick on the head and body of the victim and smashed a glass box on his head. The injuries of the

victim clearly spell out the infliction of the same on him leading to his death by hemorrhage and shock.

7. *Prima facie* it is seen that the role of Applicant-Accused No.1 is what is stated hereinabove emanating from the eye-witness account statements. None of the eye-witness account statements states that Applicant used any weapon to assault the victim. That brings me to the second limb of argument advanced by Ms. Khan seeking Applicant's bail namely that of the alleged conspiracy of all Accused. From the statement of Avinash Balraj Trivengadam who is the eye-witness, it is seen that Applicant gave a phone call to him because he wanted to give a party to give him and his friend – Amjad because of his son's Pharmacy result. It is seen that Applicant picked up the said witness Avinash Balraj Trivengadam in a rickshaw and both of them thereafter picked up Amjad on the way from Govandi and were proceeded to Nerul. At that time, when they came near D.Y. Patil Hospital, Applicant – Accused No.1 told them to wait in the rickshaw as he wanted to settle some matter and then the incident occurred. There is nothing placed on record *prima facie* for me to arrive at the conclusion that all Accused were together or conspired together. This is in context of Applicant's role. Infliction of injury by other Accused and their role is separate which is clearly reflected in the report which is undoubtedly a grievous act as argued by Mr. Dedhia, whatever may

be the motive. Citizens cannot take law in their own hand in this fashion and carry out multiple stabbing and multiple assault blows as is *prima facie* disclosed by eyewitness qua Accused No.2 and Accused No.3's role. Trial is yet to be completed and chargesheet is already filed. Prosecution proposes to examine a total of 33 witnesses. Role of Applicant – Accused No.1 is seen to be *prima facie* restricted to the slap administered by him on the victim and pulling him out of the ambulance. The trial will undoubtedly prove the complicity of the Applicant in the crime. Applicant is already incarcerated for a period of 2 years 2 months and 20 days. Considering his specific role in the crime, I am of the opinion that he deserves to be allowed on bail. Needless to state that he shall adhere to the conditions.

8. In view of the above, present 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. 50,000/- with one or two sureties in the like amount;
- (ii) Applicant shall report to the Investigating Officer of concerned Police Station once every month on the third Monday between 10:00 a.m. to 12:00 noon until completion of trial;

- (iii) 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;
- (iv) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (v) Applicant shall not enter into the jurisdiction of Nerul Police until the completion of trial save and except to register his attendance.
- (vi) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner;
- (vii) Applicant shall keep the Investigating Officer informed of his current address and mobile contact number and / or change of residence or mobile details, if any, from time to time;
- (viii) Any infraction of the above conditions shall entail cancellation of this order.

9. It is clarified that the observations in this order are limited for the purpose of granting Bail only and that I have not made any observations on merits of the case. Any observation in this order

shall not be construed as any opinion on merits so as to influence the trial as they are *prima facie* observations of the Court. The trial shall be adjudicated on its own merits and evidence in accordance with law.

10. In view of the above directions, Bail Application stands allowed and disposed.

[MILIND N. JADHAV, J.]

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