

Ajay

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

CRIMINAL BAIL APPLICATION NO. 4505 OF 2024

Chandrika Dinesh Rajbhar

.. Applicant

Versus

The State of Maharashtra

.. Respondent

-
- Mr. Francis A. Caszo, Advocate for Applicant.
 - Mr. Hitendra J. Dedhia , APP for Respondent – State.
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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 11, 2025.

P.C.:

1. Heard Mr. Caszo, learned Advocate for Applicant and Mr. Dedhia, learned APP for Respondent – State.

2. This is an Application under Section 439 of the Code of Criminal Procedure, 1973 seeking Regular Bail in connection with C.R. No.341 of 2021 registered with APMC Police Station for offences under Sections 302, 307, 323, 324, 114, 143, 145, 147, 149, 504 and 506 of Indian Penal Code, 1860. There are total 6 Accused in the crime and Applicant before me is indicted as Accused No.2. He is incarcerated since 19.09.2021 i.e. for 3 years 5 months and 21 days.

3. Mr. Caszo, learned Advocate for Applicant would submit that the role attributed to the present Applicant in the crime is that of assaulting the deceased victim by inflicting blow with a wooden

bamboo stick. He has drawn my attention to the cause of death stated in the post-mortem report at page No.91 of the Application which is stated as “Shock due to craniocerebral injury associated with stab injury (unnatural)” which according to him is not related to injury inflicted by blow with the wooden bamboo stick. He would submit that it is Accused No.3 who has been seen holding a knife at the incident spot as per witness statements on record and there is no recovery of any dangerous weapon shown from the Applicant by the prosecution.

3.1. He would submit that co-accused No.5 who has been attributed an identical role as that of the present Applicant has been enlarged on bail by the Trial Court. Hence he would urge the Court to consider the Application of Applicant on the principle of parity and release him on bail.

3.2. He would next submit that Applicant is in custody since the past 3 years 5 months and 21 days, investigation is completed long back and charge-sheet has been filed before the Trial Court. He would submit that the trial has not commenced yet and according to the charge-sheet the prosecution is likely to examine a probable 30 witnesses in the trial as stated therein and hence likelihood of the trial being completed in the near foreseeable future is bleak. Considering the above factors, he would urge the Court to enlarge the present Applicant on bail.

4. Mr. Dedhia, learned APP for State would submit that crime committed by Applicant alongwith other co-accused is serious in nature and this Court should consider the gravity of the offence. He would submit that First Informant and other witnesses have named present Applicant and attributed specific role to him of having assaulted First Informant and deceased victim with wooden bamboo stick. He would submit that Accused persons had come equipped with dangerous weapons i.e. knife and wooden bamboo stick to assault First Informant and deceased victim and hence the crime was pre-planned. He would submit that motive behind the crime is *prima facie* established as First Informant refused to give his house on rent to the sister of Accused No.1 due to which he held a grudge.

4.1. He would draw my attention to recovery panchnama appended at page No.62 of the Application to show that weapon used in the crime to stab the deceased victim was recovered at instance of the present Applicant. He would submit that there is ample material on record to corroborate the prosecution case and complicity of Applicant in the crime. He would submit that role attributed to the present Applicant is not similar to that of co-accused No.5 who is enlarged on bail by Trial Court and Applicant cannot claim parity with him. Lastly he would submit that in such facts wherein it is *prima facie* seen that crime is committed in a cool and calculated manner this Court should be cautious while considering grant of bail to the present Applicant.

5. I have heard the learned Advocates at the bar and with their able assistance perused the record of the case.

6. In the present case it is seen that co-accused No.5 has been enlarged on bail by the Trial Court. It is seen that death of deceased-victim as can be *prima facie* seen from the post-mortem report has occurred due to shock associated with the stab injury. As per material brought on record by prosecution and witness statements, the alleged role attributed to present Applicant is that of he having assaulted the deceased victim by inflicting blow with the stick. Though recovery of the weapon i.e. knife allegedly used in the present crime by the co-accused has been recovered at the instance of present Applicant, the role of inflicting stab injuries with the knife is not been ascribed to the present Applicant, but to the co-accused.

7. Charge-sheet has been filed before the Trial Court, trial has not yet commenced and charges have not been framed till date. Prosecution is likely to examine 30 witnesses in the trial and hence trial is not likely to be completed in the near foreseeable future. It has to be noted that Applicant before me is in custody for past 3 years 5 months and 21 days pending trial. As held by the Supreme Court in a catena of judgements that such long incarceration pending trial infringes the fundamental right to speedy trial and justice envisaged under Article 21 of the Constitution of India.

8. 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. Role of the Applicant / Accused in the present case is clearly spelt out as delineated hereinabove. Considering that and in view of the above *prima facie* observations and findings coupled with the facet of long pre-trial incarceration of the Applicant of 3 years 5 months and 21 days pending trial, Applicant before me has made out a case for grant of bail. Hence 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) 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;

- (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 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;
- (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; and
- (viii) 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 No.4505 of 2024 is allowed and disposed.

[MILIND N. JADHAV, J.]

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