

Shabnoor

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

BAIL APPLICATION NO.4506 OF 2024

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... Applicant

V/s.

The State of Maharashtra

... Respondent

Mr. Abdul Wahab Shaikh for Applicant.

Mrs. Rajashree V. Newton, APP for the State – respondent.

Mr. Shaikh K. K., PSI, Ulhasnagar Police Station is present.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 4, 2025

P.C.:

1. The present application is filed by the applicant under Section 439 of the Code of Criminal Procedure, 1973, seeking regular bail in connection with Crime Register No.313 of 2023, registered with Ulhasnagar Police Station for the offences punishable under Sections 302, 307, 143, 144, 146, 147, 148, 149, 323, 504, 506 read with Section 34 of the Indian Penal Code, 1860.

2. The prosecution case, in brief, is that the informant was previously employed by co-accused Nitin Kajaniya for cleaning a cattle shed. However, after the informant left the job, there developed a grudge between him and the said co-accused. On 22nd May 2023, at around 4:00 a.m., when the informant and his friend Sunil Nikam were asleep at the house of one Vicky, co-

accused Nitin, along with Bhola and the present applicant, allegedly entered the house. It is alleged that Nitin assaulted the informant on his head with an iron rod, and further gave blows on his hands and legs. The present applicant and co-accused Bhola are said to have assaulted the informant with fists and kicks.

3. It is further alleged that during the same incident, Sunil Nikam, the friend of the informant, received a serious head injury which ultimately proved fatal. The eyewitness Raviraj, in his statement recorded during the investigation, has attributed a joint role to the present applicant along with co-accused Nitin, Aniket, and Salman. He has also stated that these accused persons actively prevented the neighbours from intervening and offering help to the injured Sunil. Because of the fear created by the accused, the neighbours are said to have fled from the spot, and Sunil could not be rescued in time.

4. Learned Advocate for the applicant has submitted that the specific role attributed to the applicant is only of giving fist and kick blows to the informant, and not to the deceased Sunil. It is contended that although the statement of the eyewitness mentions a collective assault, no individual act on the part of the applicant is shown to have directly caused the death of Sunil. It is therefore argued that, considering the limited and non-fatal role of the applicant, he deserves to be enlarged on bail.

5. On the other hand, the learned APP has strongly opposed the bail application. It is pointed out that the incident occurred in the early hours, at 4:00 a.m., when the victims were asleep, indicating

a pre-planned and deliberate act. The statement of eyewitness Raviraj, recorded on 24th May 2023, clearly mentions that the applicant, along with other co-accused, assaulted Sunil with iron rods and wooden sticks, and also actively threatened and prevented the neighbours from helping the victim. It is submitted that this act of creating fear and obstructing any outside help was intentional and directly contributed to the fatal outcome. She further submitted that the principles of common intention (Section 34 IPC) and unlawful assembly with common object (Section 149 IPC) are squarely attracted in the present case, since all the accused arrived together at the scene armed with weapons like iron rods and wooden sticks. Attention of this Court is also invited to the fact that the bail application of co-accused Bhola has already been rejected on merits. In view of the seriousness and gravity of the offence, resulting in the death of a young person, the learned APP submitted that the applicant is not entitled to be released on bail at this stage.

6. I have considered the submissions advanced by the learned Advocate for the applicant and the learned APP for the State. I have also gone through the First Information Report (FIR), the statements of the eyewitnesses, and other material placed on record by the investigating agency.

7. The allegations in the present case pertain to a brutal assault committed in the early morning hours, at around 4:00 a.m., when the informant and deceased were in a vulnerable state, asleep inside a house. It is alleged that a group of accused persons, including the present applicant, arrived together at the spot armed

with iron rods and wooden sticks, and committed an assault in furtherance of a common intention and object.

8. The material placed on record, particularly the statement of eyewitness Raviraj, recorded two days after the incident, indicates that the present applicant was not a passive bystander. He has been specifically named and assigned an active role in the assault. The eyewitness has clearly stated that the applicant, along with co-accused, used weapons in the assault and also prevented neighbours from intervening, thereby obstructing any timely assistance to the injured Sunil Nikam, who later succumbed to the injuries.

9. The applicant's contention that his individual role is limited to fist and kick blows on the informant, and that no overt act is attributed to him qua the deceased, cannot be accepted in isolation. In a case involving multiple accused persons, where the incident is shown to be a result of a pre-meditated and joint attack, the question of individual roles needs to be appreciated in light of the doctrine of common intention under Section 34 IPC and common object under Section 149 IPC. The presence of the applicant with other co-accused, at the odd hour of 4:00 a.m., armed with deadly weapons, and the coordinated nature of the assault, prima facie indicates preparation and shared intention.

10. The Supreme Court has time and again observed that in cases involving heinous crimes like murder, the gravity of the offence, the manner in which the crime is committed, and the impact on society are vital factors to be considered while deciding

bail applications. In the present case, the lethality of the attack, the alleged obstruction caused to the neighbours, and the death of an unarmed and sleeping person, make the incident extremely serious and disturbing.

11. It is also relevant to note that the bail application of co-accused Bhola, who is alleged to have played a role similar to that of the present applicant, has already been rejected by this Court on merits. There is no distinguishing feature shown in the case of the present applicant which would justify taking a different view.

12. At this stage, when the trial has not commenced and the evidence is yet to be tested through cross-examination, releasing the applicant on bail may adversely affect the course of justice. There is also a reasonable apprehension of tampering with witnesses, especially when the accused persons are alleged to have previously intimidated the local residents during the commission of the offence.

13. Considering the gravity of the offence, the collective and coordinated nature of the attack, the serious allegations of obstruction, and the prima facie material showing active participation, I am of the opinion that the applicant does not deserve to be released on bail at this stage.

14. Hence, the Bail Application stands rejected.

(AMIT BORKAR, J.)