

Ajay

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

CRIMINAL BAIL APPLICATION NO. 4509 OF 2024

Tahiyad Ali Insan Ali Ansari	.. Appellant
Versus	
The State of Maharashtra	.. Respondent

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- Mr. Shaibaz Khokhara a/w. Ms. Santoshi Thakur, Advocates for Applicant.
 - Ms. Savita M. Yadav, APP for Respondent – State.
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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 28, 2025.

P.C.:

- 1.** Heard Mr. Khokhara, learned Advocate for Applicant and Ms. Yadav, learned APP for Respondent – State.
- 2.** This is an Application under section 439 of CrPC¹ seeking Regular Bail. The FIR is lodged on 05.05.2024 in connection with CR. No. 669 of 2024 registered at Manpada Police Station, Mumbai for the offences punishable under Section 302 and 504 of IPC². Applicant is incarcerated in prison since 26.05.2024 i.e. 10 Months 22 days.
- 3.** The prosecution case is based on the complaint lodged by the wife of the deceased victim who is First Informant in the present case. The victim and the Applicant were next-door neighbours.

¹ The code of Criminal Procedure, 1973.

² Indian Penal Code, 1860.

3.1 On the date of the incident i.e. 04.05.2024 at about 08:20 p.m., the deceased victim, under the influence of alcohol engaged in a heated altercation with his wife – first informant, which subsequently escalated into physical abuse and aggression. On hearing the loud arguments Applicant intervened to pacify. Victim confronted the Applicant and questioned him for his intervention and abused him alleging about his suspicious relationship with his wife i.e. the First Informant. This confrontation resulted in a further verbal altercation which escalated into a fight between the applicant and victim. Victim was in an inebriated state and a habitual drinker. Victim got injured due to infliction of a blow on his head due by a wooden stick by the Applicant. First Informant i.e. wife of victim took him to a private hospital for treatment. After receiving treatment he was discharged on that day itself and he returned back home. On the next day in the morning, Victim did not wake up. He was taken to the hospital where he was declared dead on admission.

4. Mr. Khokhara, learned Advocate for Applicant would submit that the Applicant is behind the bars since 10 month 22 days and Applicant has no antecedents. He would submit that ingredients of Section 302 of the IPC are not attracted against the Applicant as there was no intention or motive whatsoever to harm the victim. He would

further submit that because of the demise of victim on the following day, Investigating officer made recovery of a wooden stick / bamboo stick from the incident spot being the weapon used in the crime. He would draw my attention to the PM Report appended at page No.65 of the Application and submit that the said report if seen would show that victim got injured due to a singular blow on his head as there is only one injury on his head.

4.1 He would submit that the present case does not constitute any offense of homicide as the death of victim is purely unnatural which gives a flavor of homicide as there was no premeditated thought in the mind of the Applicant for committing the offence. He would further submit that there is no iota and any empirical evidence to *prima facie* show that Applicant has any motive to commit the offence. If at all the same has occurred unknowingly at the spur of the moment. If at all the same has occurred unknowingly at the spur of the moment. He would submit that since Applicant was confronted by the victim due to the reasons delineated herein above, incident in question occurred on the spur of moment due to the tirade of the victim which needs to be taken into account and Applicant's Application for bail be considered by the Court.

5. Ms. Yadav, learned APP has vehemently argued that offence committed by Applicant is grave and heinous in nature.

She would submit that an active role has been attributed to the Applicant in the commission of the crime and evidence on record *prima facie* establishes his involvement. She would submit that the postmortem report clearly states that the cause of death was because of the head injury sustained. She would draw my attention to the medical findings which indicate the injury inflicted by Applicant ultimately leading to victim's death. She would submit that the nature and intensity of the injury inflicted as demonstrated by the Applicant is evident from the recovery of the weapon (a wooden log/bamboo stick) used in the assault.

5.1 She would fairly submit that that although the attack may not have been premeditated, the deliberate and forceful blow on the victim's head, indicates a clear intention and knowledge that such an act could result in fatal consequences. She would submit that Applicant cannot claim ignorance of the consequences of his actions, as the weapon used (wooden stick), the intensity of assault, and injury caused all establish that it was not an accidental or minor scuffle but a violent and lethal attack. She would submit that *prima facie* involvement of the accused in the commission of murder dis-entitles the Applicant for release on bail and therefore Application be rejected.

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

7. It is *prima facie* seen that the incident occurred due to the altercation which escalated in a scuffle and fight and most importantly it happened on the spur of moment without any premeditation on the part of Applicant. It is seen that the victim was in an inebriated state and was abusing and assaulting the wife – the first-informant because of which the Applicant (next door neighbour) intervened to save the first informant from the assault of the victim but the grave allegation of infidelity levelled against the first informant and Applicant escalated the confrontation further between them.

8. Upon perusal of the medical report it is evident that injury sustained by the victim, though serious, does not *prima facie* establish an intention to kill which is a crucial element under Section 302 of the IPC. The medical record indicates a singular blow and there is no evidence of repeated assault or any premeditated attack. The postmortem Report findings suggest internal complication as the cause of death. The absence of prior enmity, motive or intention and the lack of any deliberate act to cause death impels me to consider the application for bail of Applicant favourably. Applicant has already undergone almost 11 months of incarceration. In the above *prima facie* facts and observations, the Applicant can be enlarged on bail.

9. 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) 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.

10. 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.

11. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

Ajay

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by AJAY
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