

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****BAIL APPLICATION NO. 4611 OF 2024**

Kunal Mohan Mokashi

... Applicant

Versus

State of Maharashtra

... Respondent

.....

Ms. Sana Raees Khan a/w. Mr. Aditya Parmar , Advocate for the Applicant.

Mr. Sameer M. Mangaonkar, APP for Respondent – State.

API – Gajjewar, Wakad Police Station, Pimpri Chinchwad, Pune present.

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CORAM : SHIVKUMAR DIGE, J.**DATED : 9th JANUARY, 2025.****P.C. :**

1. By this application the applicant is seeking regular bail in C.R. No. 529 of 2021 registered with Wakad Police Station, Pune for the offences punishable under Sections 302, 504, 506, 120(B), 201 read with 34 of Indian Penal Code and under Sections 4(25)(27) of Arms Act and under Sections 37(1), 135 and 142 of Maharashtra Police Act and Section 7 of Criminal Law (Amendment) Act.

2. It is prosecution's case that on 27.06.2021 at about 6:15 p.m. when complainant was at his home he heard commotion outside his house. When he came out, he saw his brother-in-law Nishant was being assaulted by the applicant and co-accused Sahil Kumbhar with sickle and another co-accused Prasad Thombare was sitting inside the silver Maruti Baleno car. It

is alleged that while assaulting with sickle to the deceased the applicant and co-accused Sahil were abusing and threatening the crowd gathered there of dire consequences and due to terror friends of Nishant and all persons standing there ran away. After some time the applicant and co-accused sat in Maruti Baleno car and left the spot. When complainant reached near Nishant, he saw that Nishant was severely injured, there were injuries on his forehead, both hands and his left hand palm was half cut. When Nishant was being taken to hospital, he told to the complainant that some days prior to the incident, he had assaulted the co-accused Prasad and to take revenge of it, the applicant and co-accused assaulted him. Nishant died while taking treatment. On the report of the complainant, FIR was lodged against the applicant and co-accused.

3. It is contention of learned counsel for the applicant that the applicant is behind bar more than 3 years and seven months. The applicant is seeking bail on parity, as co-accused Prasad has been released on bail by the Hon'ble Apex Court. Learned counsel further submitted that the charge has been framed against the applicant after passing the order by the Hon'ble Apex Court only to deprive the applicant from getting bail. No hearing under Section 226 of Cr.P.C. was conducted. The applicant and co-accused were not produced from jail and their lawyers were also not present when the charge was framed against them. The charge was

explained to them through video conference. There is no compliance of the mandate of Sections 207 and 226 of Cr.P.C. Many documents are not provided to the applicant and co-accused before framing of the charge. Learned counsel further submitted that the applicant and co-accused could not understand the charge explained to them through video conference, hence they refused to sign on the copy of the charge. Learned counsel further submitted that even muddemal property is not produced before the trial Court and the prosecution has acted maliciously as after filling of bail application draft charge was filed on record. On same day say on bail application was heard and decided on the same day. Learned counsel further submitted that roznama of the Trial Court shows that Advocate for the applicant was not present while framing the charge hence, requested to allow the application. She further submitted that Applicant is behind bar more than 3 years 5 months. There are 46 witnesses. It may take time to conclude the trial, hence requested to allow the application.

4. It is contention of learned APP that charge against the applicant and co-accused have been framed on 23.07.2024 and the order of the Hon'ble Apex Court is of 19.07.2024 so at the time of framing of charge, the Trial Court was not aware about the order passed by the Hon'ble Apex Court. Learned APP further submitted that order of framing the charge has not been challenged by the applicant and co-accused till date. The

deceased was brutally assaulted by applicant and co-accused. Due to assault the half palm of the deceased was cut. There are eye witnesses to the incident. Muddemal property is produced before the trial Court. List of witnesses is also produced before the Trial Court. The trial is in progress. The Hon'ble Apex Court has granted bail to the co-accused on the ground that charge was not framed, but charge is framed against the applicant hence, the applicant is not entitled for parity and requested to reject the application.

5. I have heard both the learned counsel. Perused chargesheet. The applicant is claiming bail on the ground of parity and no progress in trial and long incarceration. The Hon'ble Apex Court has granted bail to the co-accused on the ground that he was behind bar for three years and charge was not framed. In present case the charge has been framed against the applicant and co-accused, though learned counsel for the applicant objecting about the framing of charge for more than six months the said order has not been challenged by the applicant and the co-accused. The muddemal list is produced before the trial Court. List of prosecution witnesses is also produced before the trial Court. The trial is in progress. The allegations against the applicant are that he assaulted the deceased with sickle. The half palm of the deceased cut due to the assault by the applicant and the co-accused. The deceased died due to multiple

injuries of sickle. The incident is witnessed by the first informant and other eye witnesses. The applicant and co-accused killed the deceased in broad day light near the house of first informant. They assaulted him within intention to kill him. They threatened the people gathered there, if applicant is released on bail he may threaten the first informant and prosecution witnesses. There is direct involvement of the applicant in the crime. As observed earlier charge is framed against the applicant and co-accused. Muddemal is produced before the trial court. The trial is in progress. Parity would not be applicable to the applicant. Considering these facts, I am not inclined to allow application and I pass following order.

ORDER

- (i) The application is rejected.

(SHIVKUMAR DIGE, J.)