

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 4914 OF 2024

Mehboob @ Salman Chand Sayyed

Applicant

.. (Accused No. 6)

Versus

The State of Maharashtra

.. Respondent

.....

- Ms. Afreen Shaikh a/w Nikhat Shaikh for Applicant
- Ms. Rajeshree V. Newton, APP for Respondent - State
- Mr. D.S. Sonawane, PSI, Deonar Police Station

.....

CORAM : MILIND N. JADHAV, J.

DATE : MARCH 4, 2025

P. C.:

1. Heard Ms. Shaikh, learned Advocate for Applicant and Ms. Newton, learned APP for State.

2. Applicant - accused No. 6 has filed the present Application for regular bail under Section 439 of the Code of Criminal Procedure, 1973 (for short, "**Cr.PC.**") in connection with Crime No. 210/2024 registered with Deonar Police Station for the offences punishable under Sections 302, 307, 324, 323, 506(2), 34, 120(b), 143, 144, 145, 147, 148 and 149 of the Indian Penal Code, 1860 (for short "**IPC**") and Sections 37(1)(a), 135 and 142 of the Maharashtra Police Act, 1951.

3. According to prosecution and the FIR that is registered, first informant claimed that deceased victim had called him on his

mobile phone and informed him that he was having a quarrel and scuffle with one of the co-accused persons named Chand Savat. When the first informant reached the incident spot, he saw that deceased victim was being assaulted by several co-accused persons which resulted in serious injuries ultimately causing his death. FIR is lodged on 18.05.2024. Role of the co-accused persons has been stated in the FIR save and except the role of the present Applicant as also his name is missing in the FIR. However the first informant has on the following day i.e. 19.05.2024 filed a supplementary statement which is appended at page No. 62 of the Application. In that supplementary statement, he has briefly stated about the incident which happened on 17.05.2024 at 5.00 p.m. and has stated that present Applicant was also present in that scuffle / altercation and he was also involved in a fight with the victim Shahbaz and another friend of the victim - Sirtaj Ali. The statement of Sirtaj Ali Abdul Kalam Savat - brother of the first informant is also recorded on 18.05.2024 which is appended at page No. 53 of the Application. In that statement incidentally the name of Applicant is not stated in the scuffle.

4. Ms. Shaikh would submit that there is a clear discrepancy and dichotomy in the statement of the first witness as stated in the FIR and the supplementary statement which is allegedly improvised by him by including the name of the present Applicant by stating that he

was also involved in the verbal altercation and scuffle which took place on the date of the incident. Role of the Applicant is stated by only one witness i.e. Rahat Ali Yar Mohammad Savat whose statement is recorded on 18.05.2024. It is appended at page No. 63 of the Application. He has stated that when the alleged scuffle took place, there were several persons involved in the scuffle from both sides and the present Applicant along with several other co-accused had come to the incident spot and he along with others was involved in beating the victim with a belt. Said statement states that after the victim was injured by the main accused with weapon (knife), thereafter the present Applicant along with other left the incident spot.

5. *Prima facie*, it is seen that the scuffle took at a public place called Kalam Garden. Several witness statements have been recorded. Save and except the witness statement of Rahat Ali which is appended at page No. 63 of the Application which denotes that Applicant also came to the spot and was involved in the scuffle and was beating the victim with belt along with others, there is no other corroboration to the supplementary statement filed by the first informant. The supplementary statement itself deviates from the contents of the FIR that has been lodged. Even if taken at its highest wherein the Applicant is alleged to have been involved along with four other accused persons in assaulting the victim with a belt, the precise

role of the Applicant is not *prima facie* attributable as the statement remains vague and lacks specificity. Role of the Applicant is also not specifically stated by the first informant in supplementary statement save and except to state that Applicant was also present at the incident spot. With respect to the quarrel which took place and leading to demise of the victim if the medical report is seen, the death of the victim has occurred due to a stab injury over his chest and insofar as the other injuries are concerned, it is seen that there are two injuries on the chest, one injury on the thigh and one contusion injury on the posterior region. Considering the medical opinion attributing the cause of death of the victim to a stab wound over the chest and the role of the Applicant as elucidated in one of the witness statements, I am of the opinion that further incarceration of the Applicant is not warranted.

6. Though the learned APP has vehemently contended that a conspiracy existed amongst the co-accused and in furtherance of the said conspiracy the witness statement clearly indicates the role of the Applicant, *prima facie*, it is observed that the Applicant was not named in the FIR at the time of its registration. That enures to the benefit of the Applicant at this *prima facie* stage for granting bail.

7. In view of the above *prima facie* observations, I am inclined to allow the present Application and release the Applicant on

bail. Needless to state that complicity of the Applicant in the crime shall be proved by the prosecution at the time of trial.

8. In view of the above, present Application is allowed in terms of prayer clause (1) 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) Applicant shall report to the Investigating Officer of concerned Police Station on the third Saturday between 10:00 a.m. to 12:00 p.m. for the first three months and thereafter as and when called;
- (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. He shall deposit his passport, if any, within two weeks after being released on bail with the Trial Court;

- (v) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner;
- (vi) 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;
- (vii) 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 I have not made any observations on the merits of the case and the trial shall be adjudicated on the basis of evidence and strictly in accordance with law.

10. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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by RAVINDRA
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