

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

BAIL APPLICATION NO.1255 OF 2015

Swapnil Bharat Bhumkar

...Applicant

Versus

The State of Maharashtra

...Respondent

.....

Mr. Kuldeep Nikam for the Applicant.

Mr. Arfan Sait, APP for the Respondent -State.

Mr. K.S. Pujari, P.I. Warje-Malwadi Police station, Pune,
Present.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE : 5th JANUARY, 2016.

P. C. :

This is an application for bail filed by the aforesaid Applicant, facing trial in Sessions Case No.159 of 2015 pending on the file of the learned Additional Sessions Judge, Pune. The said case arises from C.R. No.376 of 2014 registered with Warje Malwadi Police Station, Pune, for offences punishable under sections 143, 147, 148, 149, 307, 504 and 506 (2) r/w. 34 of the Indian Penal Code and under sections 37(1) and (3), 135 and 142 of the Bombay Police Act.

2. The allegations against the Applicant in brief are that on 30.11.2014 at about 8.00 p.m. the Applicant alongwith the other co-

accused had formed an unlawful assembly armed with deadly weapons and assaulted Kishore Yenpure and thereby attempted to cause his death. Pursuant to the complaint lodged by the Kishore Yenpure, the aforestated crime was registered. The case was investigated and upon completion of the investigation, charge sheet was filed and the case has been committed to the Sessions Court. The Applicant filed an application for bail, which has been rejected by the learned Additional Sessions Judge, Pune, vide order dated 28.4.2015. Hence, this application.

3. The learned counsel for the Applicant has submitted that the name of the Applicant does not figure in the FIR. The statements of the witnesses also do not indicate that the Applicant herein was involved in commission of the said crime. He therefore, submits that there is no prima facie material to show the involvement of the Applicant in commission of the said crime. The learned counsel for the Applicant further stated that the learned Additional Sessions Judge has rejected the bail application mainly on the ground of criminal antecedents of the Applicant. He has relied upon the judgment of this Court in **Anil @ Bapu Balasaheb Marne Vs. State of Maharashtra, 1995 (2) B.Cr.C. 144, Rakesh Fulchand Dhkolia @ Mahakali Vs.**

The State of Maharashtra in Criminal Application No.975 of 2009, the judgments of the Hon'ble Apex Court in Maulana Mohammed Amir Rashadi Vs. State of U.P. & Anr., 2012 (2), Mh.L.J. (Cri), 412, Sanjay Chandra Vs. Central Bureau of Investigation, 2012 Cri. L.J. 702, Jaichand Vs. State of Rajasthan, 1991 DCLS (Cri.) Soft 79.

4. The learned APP has submitted that the complainant as well as the witnesses had specified the role of the Applicant in the supplementary statements. He has further submitted that the complainant had sustained head injuries and could not have expected to give detailed narration of the incident. The learned APP further submitted that the complainant has also assigned reasons for not giving the details of the incident in the FIR. He has further submitted that the Applicant herein is involved in series of crimes and that he has committed the present crime while he was was on bail. The criminal antecedents as well as the conduct of the Applicant would not justify grant of bail.

5. I have perused the records and considered the submissions advanced by the learned counsel for the Applicant and the learned APP for the Respondent -State.

6. In the case of **Sanjay Chandra Vs. Central Bureau of Investigation (supra)**, the Apex Court has held that in determination whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration. The grant or refusal to grant bail lies within the discretion of the Court but is regulated to large extent, by the facts and circumstances of each particular case. The Apex Court has further held that the primary purposes of bail in criminal case are to relieve the accused of imprisonment by keeping him pending the trial and at the same time, to keep the accused constructively in the custody of the Court, whether before or after conviction to assure that he will submit to the jurisdiction of the Court and be in attendance thereon whenever his presence is required.

7. In the instant case, the FIR lodged by Kishore Yenpure indicates that on 30.11.2014 at about 8.00 p.m. while he was proceeding towards Bhimshakti Chowk, one Nilesh and another person came on the motor-cycle and questioned him whether he was a witness in the case of Sonya Dalvi and they abused him and thereafter assaulted him with a sickle. The complainant has stated that while he was running, the friends of Nilesh followed him and also assaulted him

with iron pipes and attempted to cause his death. He has stated that he had sustained grievous injuries and that he was taken to Mae Mangeshkar Hospital at Pune, for treatment. It is true that the complainant had not specified the name of the Applicant in the FIR dated 30.11.2014 however, his supplementary statement was recorded on 3.12.2014 wherein he had categorically stated that the Applicant herein was one of the members of the unlawful assemble and was involved in assaulting him. The complainant had explained that he was unable to narrate the names of all the assailants in view of the injuries sustained by him and because of the terror created by the co-accused Nilesh Gaikwad and Nilesh Misal. Hence, the mere fact that he had not given a complete narration in the FIR, is not a ground to disbelieve the statement made in the supplementary statement.

8. Furthermore, the supplementary statements of the other witnesses also prima facie indicate that the Applicant was a member of an unlawful assembly and that he had inflicted serious injuries on the complainant.

9. The records therefore, prima facie reveal that the Applicant herein was member of the unlawful assembly which had inflicted

serious injuries on the vital parts of the complainant and had thereby attempted to cause his death.

10. The learned APP has placed on record list of cases registered against the Applicant herein. Perusal of the said list prima facie reveals that the Applicant is involved in Crime No.38 of 2011 for the offences punishable under sections 143, 147, 148, 149, 307, 452, 324, 323 and 504 of the IPC, Crime No.135 of 2011 for the offences punishable under sections 143, 147, 149, 326, 324, 336, 363 of the IPC, Crime No.146 of 2011 for the offences punishable under sections 326 r/w. 34 of the IPC and Crime No.3082 of 2013 for the offences punishable under sections 4(25) of Arms Act and 37 (1) r/w.135 of the Mumbai Police Act. Furthermore, proceedings under section 107 of the Cr.P.C. being Chapter Case No.87 of 2011 and Chapter Case No.6 of 2013 under section 110 of the Cr.P.C. were initiated against the Applicant by Warje Malwadi Police Station, Pune. The records therefore reveal that the Applicant has criminal antecedents and he has committed the present crime while he was on bail. In the case of **Neeru Yadav Vs. State of Uttar Pradesh & Anr. (2014) 16 Supreme Court Cases 508**, the Apex Court has held that the criminal antecedents of one of the accused is one of the factors to be

considered. In the light of the above, the decisions in the case of **Anil @ Bapu Balasaheb Marne Vs. State of Maharashtra and Rakesh Fulchand Dhkolia @ Mahakali Vs. The State of Maharashtra** would not be applicable to the facts of the present case. In the present case, there is prima facie material to show the involvement of the Applicant in commission of the said crime, which is of serious nature. Furthermore, the Applicant has criminal antecedents. The trial has not commenced and considering the nature of allegations, the possibility of the Applicant influencing and /or threatening the witnesses and thereby thwarting the course of justice cannot be ruled out.

11. Under the circumstances and in view of discussion supra, the application is dismissed.

(ANUJA PRABHUDESSAI, J.)