

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

932 BAIL APPLICATION NO.1833 OF 2022

MAHESH SARANGDHAR PATIL
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Pawar Hemantkumar F.
APP for Respondent-State : Mr. K. S. Patil.
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CORAM : S. G. MEHARE, J.
DATE : 11.11.2022

PER COURT :-

1. Heard the learned counsel for the applicant and the learned APP for the respondent-State at length.
2. The applicant is an accused in Crime No.103 of 2021, registered for the offences punishable under Sections 302, 307, 326, 324, 323, and 504 read with Section 34 of the IPC.
3. Before advertng to the facts of the case and arguments advanced by the learned counsel for the applicant, it would be appropriate to consider the law on granting bail. The Hon'ble Supreme Court in the case of *Ramesh Bhavan Rathod Vs. Vishanbhai Hirabhai Makwana (Koli) and another [(2021) 6 SCC page 230]* in paragraphs Nos.39 and 40 observed thus :

"39. Grant of bail under Section 439 of the Cr.PC. is a matter involving the exercise of judicial discretion. Judicial discretion in

granting or refusing bail – as in the case of any other discretion which is vested in a court as a judicial institution – is not unstructured. The duty to record reasons is a significant safeguard which ensures that the discretion which is entrusted to the Court is exercised in a judicious manner. The recording of reasons in a judicial order ensures that the thought process underlying the order is subject to scrutiny and that it meets objective standards of reason and justice....”

“40. We are also constrained to record our disapproval of the manner in which the application for bail of Vishan (A-6) was disposed of. The High Court sought to support its decision to grant bail by stating that it had perused the material on record and was granting bail "without discussing the evidence in detail" taking into consideration:

- (1) The facts of the case;*
- (2) The nature of allegations;*
- (3) Gravity of offences; and*
- (4) Role attributed to the accused.”*

4. The Hon’ble Apex Court in case of ***Prasanta Kumar Sarkar Vs. Ashish Chatterjee and another ; (2010) 14 SCC 496*** has laid down the law that the following factors shall be borne in mind while considering the bail application ;

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
- (ii) nature and gravity of the accusation;*
- (iii) severity of the punishment in the event of conviction;*
- (iv) danger of the accused absconding or fleeing, if released on bail;*
- (v) character, behaviour, means, position and standing of the accused;*
- (vi) likelihood of the offence being repeated;*

- (vii) reasonable apprehension of the witnesses being influenced; and*
- (viii) danger, of course, of justice being thwarted by grant of bail.*

5. Learned counsel for the applicant has vehemently argued that there is a counter case. The present applicants have filed the report first against the first informant. The present applicant, Mahesh has suffered serious injuries and was hospitalized for many days. It would also argue that the complainant and the other injured were the assailants. They were aggressive. They came to the house of the present applicant armed with deadly weapons. Hence, by way of private defence, the applicants have resisted the assault. This factum may also be considered. He has also argued that the Investigating Officer has examined the common witnesses in both cases. The same Investigating Officer has investigated both crimes. However, witnesses Rajendra Bhole and Rajendra Nehate are inconsistent. It has also referred to the statement of witness Vishal Koli and argued that the role attributed to the present applicant was not serious. He further argued that the injury suffered by Rajendra Sapkale, allegedly caused by the present applicant, was not dangerous to the life. He has referred to the injury report of the injured to support his argument. He has also referred to the statement of witness

Lalit Baliram Sonawane and tried to argue that the role attributed to the present applicant is limited and by way of the private defence. He also referred to the report lodged by the applicant's side. Referring to the spot panchnama, he argued that the incident happened just in front of the house of the applicant. The spot panchnama again supports the case of the applicant that the injured persons were aggressive. It would also argue that the incident happened in two parts. The complainant Subhash Koli, who denied to pay the money for the water supply, a trivial quarrel took place. Thereafter, all the injured, along with the complainant Subhash Koli went to the house of the applicant, and assaulted them mercilessly. He would argue that the applicant is ready to abide by the conditions if enlarged on bail. He would also argue that the co-accused Mayur, who has attributed a similar role, has been released on bail by the learned Sessions Court. The charge sheet has been filed. The applicant is behind bars since long. There are no antecedents to his discredit. Hence, he may be released on bail.

6. Learned APP strongly opposed the application and would submit that the applicant was most aggressive. He assaulted one Rahul Sapkale and caused him blunt trauma to his head, CLW over the frontoparietal region of the head measuring 5 cm

x 1 cm x 1 cm and a vertical fracture of the frontal bone. These are grievous injuries. The injuries are evidence of the applicant's intention to kill. He would further argue that the applicant had been absconding for about four months. Subsequent to registering the crime, the offence has been converted to murder. Considering the conduct of the applicant, he may not be granted bail. A person who died had 13 injuries. That apart, in an earlier application for cancellation of bail, this Court has specifically observed the role played by the applicant and had cancelled the bail granted to them by the Sessions Court. The role attributed to the applicant and the way of assault, it cannot be said that the applicant has acted in private defence. The offence is serious. The possibility of repeating the crime cannot be denied. Hence, the application may be rejected.

7. It is not in dispute that earlier, the learned Sessions Judge had granted the bail to the applicant. However, an application for cancellation of bail was filed before this Court vide Application for Cancellation of Bail No.222 of 2021. This Court (Coram : Smt. Vibha Kankanwadi, J.), considering the aspect of regular bail and the law laid down by the Hon'ble Supreme Court, had cancelled the bail. Besides this, the role attributed to the applicant was also discussed in the said order.

The present applicant had challenged the order before the Hon'ble Supreme Court. The Hon'ble Supreme Court declined to interfere with the said order. However, it has been observed that dismissal of the said petition shall not be an impediment of the petitioner, who applying for regular bail after surrendering. Thereafter, the applicant, instead of appearing before the Trial Court, filed an application for bail to this Court with a request to allow him to surrender. After discussing the facts and law, finally, the applicant surrendered before the Sessions Court and then filed the bail application. The learned Sessions Court discussing the facts and law, was pleased to reject the application. Hence, the applicant is before this Court.

8. As discussed above, the law is well settled that while granting the bail application, the Court must examine the role attributed to each accused. The nature of the allegations, the gravity of the offence and the facts of the case are other factors to be considered by the Court. As far as the right of private defence is concerned, it is a matter of evidence before the trial Court. In this case, one person has lost his life due to the acts committed by the accused. While considering the bail application, the severity of the punishment is also a factor to be considered. As far as the aggression is concerned, the

complainant and injured persons are also the accused in the counter case.

9. After having gone through the evidence referred to by the learned counsel for the applicant, there appears *prima facie* serious case against the applicant. The role attributed to the applicant is very specific in that he assaulted and injured Rahul on his head and caused him CLW and a vertical fracture on the frontal bone. Considering the nature of the injuries, the intention of the applicant is very clear that he did not show mercy and caused serious injuries.

10. Considering the law laid down by the Hon'ble Supreme Court as well as the facts of the case, the gravity of the offence and the influence of the applicant and his family, it is not desirable to grant the bail. Hence, the application stands dismissed.

(S. G. MEHARE, J.)

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