

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**920 BAIL APPLICATION NO.1551 OF 2021
WITH APPLN/3083/2021 IN BA/1551/2021**

**ARJUN SURESH MAHALE
VERSUS
THE STATE OF MAHARASHTRA**

Shri. Joydeep Chatterji, Advocate for the applicant
Shri. A. V. Deshmukh, APP for the respondent/State
Smt. Rashmi S. Kulkarni, Advocate for the informant
assisting APP

**CORAM : M. G. SEWLIKAR, J.
DATED : 21st January, 2022**

PER COURT :-

1. By this application the applicant is seeking his enlargement on bail in connection with Crime No. 48 of 2017 registered with Shanishingnapur Police Station, Taluka Newasa, District Ahmednagar for the offence under Sections 302, 506, 143, 147, 148, 149, 120B, 201 of the Indian Penal Code, under Sections 3/25, 4/25 of Arms Act and under Sections 37(1)(3) and 135 of Maharashtra Police Act.

2. Facts leading to this application can be summarized thus:

. There was a dispute between deceased Ganesh Bhutkar and Avinash Changdeo Bankar. On that count accused Avinash Changdeo Bankar used to threaten the deceased that he would eliminate deceased.

3. As per narration in the FIR, on 20th December, 2017 at about 5.30 p.m. Sunil Raundal and Munna told the informant that deceased was being beaten at Shaniraj parking. Informant went there running and found that accused Avinash Changdeo Bankar had fallen Ganesh down and had delivered blows of axe on the head of Ganesh. Accused Lakhan Dhage pierced sword in the chest of Ganesh. Accused Mayur Harkal and Ganesh Sonawane also assaulted the deceased on his head and other part of the body by means of swords. Applicant Arjun Mahale and accused Pankaj Bankar were brandishing pistol so that Ganesh should not run away. On these allegations FIR came to be lodged.

4. Heard Shri Chatterji, learned counsel for the

applicant, learned APP Shri. Deshmukh for the State and learned counsel Smt. Kulkarni for the informant assisting APP.

5. Learned counsel Shri. Chatterji submits that accused Pankaj Bankar has been released on bail by this Court. Role of the applicant is similar to that of accused Pankaj Bankar. The role ascribed to accused Pankaj Bankar is that he was brandishing pistol. Same role has been ascribed to the applicant as well. He submits that a criminal case is pending against the applicant under Sections 307, 353, 332, 333, 336, 143, 147, 148, 149, 427, 506(2) of the Indian Penal Code and Criminal Law Amendment Act 1932 of Section 7 of Bombay Police Act and under Section 4 of Prevention of Public Premises Damages Act. He submits that there is virtually no difference between the role of applicant and accused Pankaj Bankar. He submits that even the eye witnesses have mentioned the role of applicant and accused Pankaj Bankar to be the same. He submits that even on merits applicant is entitled to be released on bail. He placed

reliance on the case of ***Maulana Mohammed Amir Rashadi Versus State of Uttar Pradesh and Another*** reported in ***(2012) 2 Supreme Court Cases 382*** for the proposition that despite the antecedents, accused can be released on bail.

6. Learned APP assisted by Smt. Kulkarni, learned counsel submits that applicant cannot claim parity because weapons having blood stains are recovered at the instance of the applicant. He placed reliance on the case of ***Brijmani Devi Versus Pappu Kumar and Another*** reported in ***2021 SCC OnLine SC 1280*** for the proposition that antecedents have to be considered while deciding bail applications. He submits that because of these distinguishing factors applicant cannot claim parity.

7. As indicated earlier, at the instance of applicant weapons having blood stains are recovered. True it is that as per the narration in the FIR and the statements of the witnesses the role ascribed is of brandishing pistol. However,

this additional fact was not there so far as accused Pankaj Bankar is concerned. Moreover, there is criminal antecedent against the applicant. In the case of ***Maulana Mohammed Amir Rashadi Versus State of Uttar Pradesh and Another*** (Cited supra) it is held that,

“10. It is not in dispute and highlighted that the second respondent is a sitting Member of Parliament facing several criminal cases. It is also not in dispute that most of the cases ended in acquittal for want of proper witnesses or pending trial. As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the court, etc.”

8. In the case of ***Brijmani Devi Versus Pappu Kumar and Another*** (Cited supra) the Hon’ble Supreme Court held that,

“25. While we are conscious of the fact that liberty of an individual is an invaluable right, at the same time while considering an application for bail Courts cannot lose sight of the serious nature of the accusations against an accused and the facts that have a bearing in the case, particularly, when the accusations may not be false, frivolous or vexatious in nature but are supported by adequate material brought on record so as to enable a Court to arrive at a prima facie conclusion. While

considering an application for grant of bail a prima facie conclusion must be supported by reasons and must be arrived at after having regard to the vital facts of the case brought on record. Due consideration must be given to facts suggestive of the nature of crime, the criminal antecedents of the accused, if any, and the nature of punishment that would follow a conviction vis-a-vis the offence/s alleged against an accused.”

9. Having regard to these distinguishing factors applicant is not entitled to bail. Hence the order.

ORDER

- (i) Application is dismissed.
- (ii) Pending application, if any, stands disposed of.

[M. G. SEWLIKAR, J.]

ssp