

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

BAIL APPLICATION NO.541 OF 2023
WITH APPLN/1446/2023 IN BA/541/2023

BHAIYA @ RUSHIKESH SUBHASH BHOSALE
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr, M. S. Kulkarni
APP for Respondent: Mr. S. P. Sonpawale
Advocate for the complainant : Mr. N. B. Narwade

....

CORAM : S. G. MEHARE, J.

DATE : 26.04.2023

PER COURT :

1. Heard the learned counsel for the applicant and the learned A.P.P for the State and learned counsel for the complainant.

2. The applicant is seeking bail in Crime No. 19 of 2017 registered with Parner Police Station, District Ahmednagar for the offences punishable under Sections 302, 120(B), 143, 147, 148, 149, 109, 212, 465, 468, 201 of the Indian Penal Code, Sections 3/25, 4/25, 27 of the Indian Arms Act and Sections 3(1)(i), 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organized Crime Act, 1999.(MCOCA)

3. The learned counsel for the applicant would submit that the applicant has been arrested in the crime on 28th January 2017.

4. The report of the learned Trial Judge reveals that the case was transferred to her Court from Nashik Court as per the order of this Court in 2020. Her report further reveals that the accused are moving applications for seeking different reliefs from time to time. Hence, the progress in the trial has been stalled. Her report also shows that one of the co-accused Prashant @ Pashya is an accused in another case had filed an application for bail and same was pending before the same Judge. Therefore, bail applications moved by the other co-accused below Exh. 59 and 60 were not decided. It appears that it was incorrect practice. Both the trials were separate and independent. Therefore, unless there was an order clubbing the matters or trying together, the Court is not expected to stall the progress of one case for another. The learned Additional Sessions Judge, Ahmednagar, District Ahmednagar is directed to take care henceforth and ensure not to stall one trial for the reason that in another trial the

applications are filed and pending. Every case shall be dealt with independently if not clubbed.

5. The learned counsel for the applicant has claimed bail on parity granted to one of the co-accused Pravin. However, the role attributed to the present applicant and the Pravin was different. Hence, applicant is not entitled to claim the parity.

6. In addition to the above ground the learned counsel for the applicant would submit that the allegations levelled against the applicant were, after the incident happened he along with co-accused Akshya reached on the spot on motorbike. He was a pillion rider. In C.C.T.V footage he has been captured but not seen doing any act. The eye witness was not sure about the specific role attributed to him. The vague statement has been made that other associates of main accused were assaulting the deceased with bricks. He came to the Court for the first time. He never delayed the trial. The prosecution has listed 156 witnesses. It will take a long time to record the evidence and complete the trial. The applicant is behind bar for five years. He is not

the resident of Parner. In earlier crime registered against him he has been granted bail. On these premises, he seeks bail.

7. The learned A.P.P. and learned counsel for the complainant have opposed the application. They have referred to the C.C.T.V footage in which the applicant has been captured. They would submit that the applicant was associated with the main accused. The other witnesses have named him specifically. One of the witnesses knew the applicant as he was accompanying the main accused Pravin Rasal.

8. The specific allegations have been levelled against the applicant that he was holding the sword in his hand and created a terror with an intention that nobody should come to help or rescue the deceased. The trial has not been protracted deliberately by the prosecution. The accused have protracted the trial. Hence, they are not entitle to bail. They prayed to dismiss the application.

9. Considering the progress report of the learned Trial Judge, this Court is not considering the bail of the present applicant on the length of his languishing in jail. His bail

application is considered on the merits. The evidence stated above against the applicant shows that he reached on the spot after the incident was over. He was captured in the C.C.T.V. footage but the witnesses who saw him allegedly assaulting the deceased with bricks, did not identify him.

10. In sum and substance, reading the statements of the so called eye witnesses, the Court believes that the statements are vague as regards the role attributed to the applicant. There is a large number of the witnesses. Considering the role attributed to the applicant and the evidence against him, the Court is of the view that it would not be appropriate to keep the applicant behind bar. He may be granted bail on certain stringent conditions. Hence, the following order :-

ORDER

- (i) The application is allowed.
- (ii) Applicant Bhaiya @ Rushikesh Subhash Bhosale be released on bail on furnishing P. B. and S.B. of Rs. 50,000/- with one solvent surety of the like amount, in aforementioned crime registered with aforementioned police station, on the following conditions :-
 - (a) He shall not tamper with the prosecution witnesses.

- (b) He shall neither contact the other co-accused nor the witnesses in any mode or manner till the conclusion of the trial.
 - (c) He shall not involve in the similar crime.
 - (d) He shall attend the trial on each and every effective date.
 - (e) If he did not attend the trial for two consecutive dates without any substantial reasons, the prosecution may approach for cancellation of bail.
 - (f) Till the conclusion of the trial he shall report his presence in his town to the local police station on telephone on every Sunday, between 4.00 p.m to 5.00 p.m., except the dates of his trial.
- (iii) Criminal Application No. 1446 of 2021 stands disposed of.

**(S. G. MEHARE)
JUDGE**