

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 642 OF 2023

Lakhan @ Laxman S/o. Namdeo Dhage,
Age about 30 years,
Residing at and Post Kangani,
Shani Shanganapur, Taluka Newasa,
District Ahmednagar
(At present in judicial custody and
lodged at Nashik Road Central Prison)

.. Applicant
(Original Accused No.4)

Versus

The State of Maharashtra

.. Respondent

Mr. Nitin Shejpal, Advocate instructed by Mr. S. R. Andhale,
Advocate for Applicant;
Mr. S. B. Narwade, A.P.P. for Respondent/State

CORAM : S. G. MEHARE, J.

Reserved on : 20.04.2023

Pronounced on : 28.04.2023

ORDER :-

1. The applicant is seeking bail in F.I.R. I-48 of 2017 registered with Police Station Shani Shignapur, for the offences punishable under Sections 302, 506, 143, 147, 148 and 149 of the Indian Penal Code, Sections 3/25 and 4/25 of the Indian Arms Act and Section 27(1)(3)/135 of the Bombay Police Act.

2. Heard the learned counsel for the applicant and the learned A.P.P. for the prosecution at length.

3. The learned counsel for the applicant argued that the applicant was arrested on 10th January 2018. Lastly, he claimed bail before the learned Additional Sessions Judge, Newasa, which was rejected on 10th March 2023. After a long and elaborate argument, it revealed that the applicant is claiming bail on parity. The learned counsel would submit that co-accused Ganesh Sonawane whose role is at par with the applicant has been granted bail. This Court and the Hon'ble Supreme Court also granted bail to Pankaj Bankar and Arjun Mahale. He also claimed the bail on the ground that, to date, only one witness has been examined, and the trial is going at a snail's pace. There are no chances of completing the trial in the near future. He has been languishing behind bars for about five years. The Hon'ble Supreme Court granted bail to co-accused Bahurao @ Babasaheb Raibhan Dhamale on the ground that he was languishing in jail for five years. He would vehemently argue that prolonged incarceration of the accused without the prospect of completing the trial in the near future is a good ground for granting bail. He also argued that the FIR was lodged belatedly. The first informant/complainant was not the eyewitness. After the incident, he went to the police station immediately and lodged a report against the unknown person. Accordingly, in the station diary, the crime was registered against the unknown persons. The weapons allegedly used in the crime have been recovered from co-accused Arjun Mahale. There

was no recovery from the applicant. The CCTV footage does not support the prosecution. In inquest panchnama the FIR number was missing. That describes that before the report was lodged, the investigation was commenced. He also referred to the Chemical Analysis reports and vehemently argued that the applicant allegedly seen in CCTV footage was not armed with the weapon. He has also placed on record the station diary entries.

4. To buttress his arguments, he relied on the following case laws:-

- (i) *Menino Lopes Versus State of Goa, 1994(2) Mh.L.J. 1803,*
- (ii) *Union of India Versus N. A. Najeeb, 2021 DGLS (SC) 45,*
- (iii) *Iqbal Ahmed Kabir Ahmed Versus State of Maharashtra, 2021 DGLS (Bom) 991,*
- (iv) *Chintan Vidyasagar Upadhyay Versus State of Maharashtra, 2021 DGLS (SC) 1138,*
- (v) *Ajit Bhagwan Tiwde Versus State of Maharashtra, Bail Application No. 995 of 2021 (Bombay) dated 19.01.2022.*

5. Per contra, the learned A.P.P. would argue that the role attributed to the applicant is not identical to co-accused Ganesh. The applicant captured in CCTV footage shows that the applicant was chasing the deceased. There was a telephonic communication between co-accused Avinash Bankar and deceased Ganesh Bhutkar. There are eyewitnesses to the incident. There were

around *ante mortem* injuries on the person of the deceased. He was brutally killed. There are antecedents to the discredit of the applicant. He is involved in similar crimes. The offence is grave, and the applicant was most aggressive. Hence, he does not deserve bail.

6. This Court, by order dated 10th October 2022, granted bail to co-accused Ganesh Balasaheb Sonawane, observing that the applicant was not seen in CCTV footage assaulting the deceased nor found in any of the vehicles. He was also not seen coming and leaving the spot of the incident. He was incarcerated for four years. The CCTV footage contradicts the eyewitness. The name of the applicant (Ganesh) does not figure in the station diary entries.

7. Where the case of the accused is similar in all respects as that of the co-accused, then the rule of parity may be extended to the accused claiming parity. Considering the observations recorded by this Court as regards the role attributed to accused Ganesh compared with the role attributed to the applicant, there appears to be a material difference. The applicant was captured in CCTV footage chasing the deceased. That indicates his role attributed in the commission of the crime. Hence, the Court is of the view that the applicant is not entitled to bail on parity.

8. The fact reveals that immediately after the incident, the entries in the station diary of the police station were taken. The

station diary entry No.013 dated 20.12.2017, recorded at about 6.23 p.m. indicates that the first informant personally went to the police station. However, he did not disclose the name of any accused. However, the police station also received the information from the Control Room about the incident with the names of the accused. Then the first informant again gave the information to the police about the incident naming the applicant and others as assailants. The first station diary entry was taken just an information about the incident, and the first informant took the deceased to the hospital. The learned counsel for the applicant would argue that considering the station diary entry No.013, the first informant Rameshwar was not the eyewitness. If his arguments are accepted, the said station diary entry will not help the applicant. However, there are many eyewitnesses to the incident. Capturing every incident is also impossible due to the range and angle of CCTV cameras. Therefore, it would be unsafe to accept that there was no evidence against the applicant at this juncture. The applicant was admittedly captured in the CCTV footage. However, the learned counsel for the applicant would argue that he was not seen holding any weapon. The prosecution case is that the weapons were taken from his Scorpio car, and then the incident happened. In light of this fact, the applicant may take advantage of holding no weapon when he was on two wheeler.

9. It is not in dispute that, to date, only one witness has been examined. Around two and half years have been spent in Covid-19 Pandemic. Considering the law laid down in a case law relied upon by the applicant, the Hon'ble Supreme Court and this Court granted bail on the ground of prolonged incarceration, holding that it infringes the right of the accused to life and personal liberty. The Hon'ble Supreme Court granted bail to co-accused Bhaurao @ Dadasaheb Raybhan Dhamale @ Dadasaheb Raybhan Dhamale, considering his role and custody for five years.

10. Learned A.P.P. states that the trial has been commenced and likely to be completed in the near future. The Hon'ble Supreme Court did not grant bail to the co-accused Bhaurao merely on the ground of length of custody, but the role assigned to him was also taken into consideration. Hence, the applicant cannot claim parity.

11. The prosecution also has a case that two other body crimes attempting to commit the murder were to the discredit of the applicant. Discussing various case laws on the long incarceration of the accused and granting him bail, the Bombay High Court at Principal Seat, in Bail Application No.995 of 2021, in paragraph no. 31, has observed thus;

"31. In the light of observations of Supreme Court and this Court as stated above, the Court has to perform balancing act. The sympathy for undertrials who are in custody has to be balanced with gravity/magnitude of crime, likelihood of threat to witnesses. The analysis

may be based on facts of each case."

12. In the light of observations of the Hon'ble Supreme Court and this Court, as stated above, the Court has to perform a balancing act. The sympathy for undertrials who are in custody has to be balanced with the gravity/magnitude of the crime and the likelihood of threat to witnesses. The analysis may be based on the facts of each case.

13. In the light of the above observations, there appears substance in the arguments of learned A.P.P. that the Hon'ble Supreme Court also did not grant bail to co-accused Bhaurao @ Dadasaheb Raybhan solely on the ground of the length of his incarceration and role attributed to him was also considered. The antecedents may be a ground to refuse the bail.

14. Covid-19 Pandemic was one of the major reasons for stalling the trial. Around two and half years were spent without any progress. The observation of the learned Additional Sessions Judge, Newasa, in the order, reveals that the list of the witnesses is not a big, and the matter may be disposed of if the parties cooperate with the Court. However, the fact remains that there is strong evidence against the applicant that he assaulted the deceased with a sword on his chest and caused the injuries. The overall material collected by the police reveals that the applicant was aggressive and played an active role. Considering his past, the

possibility of tampering with the prosecution witnesses cannot be ruled out. It was a daylight murder. Therefore, the witnesses should be protected from the terror created by the applicant in the vicinity. The trial may be completed shortly, provided the accused support the prosecution.

15. The Court did not find substance in the application for the above reasons. Hence, the application stands rejected.

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

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