



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

BAIL APPLICATION NO. 436 OF 2023

YOGESH ARJUN VARLI @ GAJANI ..APPLICANT

VS.

THE STATE OF MAHARASHTRA ..RESPONDENT

Mr. Tapan Thatte i/b Adv. Mohammad S. Mulla for the
Applicant.

Mr. N.B. Patil, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : SEPTEMBER 06, 2023

P.C. :

1. Heard learned counsel for the applicant and learned
APP for the State.

2. This is an application for bail in respect of the offence
punishable under Sections 395, 397, 307, 353, 332, 333,
326, 341, 427, 120-B of the Indian Penal Code and under
Section 65(a)(e) of the Maharashtra Prohibition Act
registered vide C.R. No. 12 of 2021 dated 27/03/2021 with
Gholwad Police Station, District Palghar.

3. The applicant is accused No.2. The applicant was
arrested on 27/03/2021 and is now in custody for a period

of 2 years and 5 months.

4. The applicant is seeking parity with accused Nos. 3 to 12 who have been enlarged on bail by this Court and trial Court. The trial Court had granted bail to the other co-accused by relying upon the order dated 16/12/2021 passed by this Court while enlarging the accused Nos. 10, 11 and 12 in Bail Application No. 2857 of 2021. The said order reads thus:

"1. Applicants were apprehended on 28.03.2021 in Crime No.1-12 of 2021 registered with Gholwad Police Station for the offence punishable under Sections 395, 397, 307, 353, 332, 326, 341, 427, 120B of IPC and Section 65(a) (e) of the Maharashtra Prohibition Act.

2. The prosecution case against the applicants is, accused Nos.1 and 2 are in habit of transport of liquor from Daman to Maharashtra. On the date of the incident after having intercepted by the police squad, other accused including applicants assaulted the police officials who were discharging their duties.

3. Submissions of learned counsel for the applicants Mr. Sudeep Pasbola are that there are no criminal antecedents against the applicants. No specific role of active participation in the matter of assault on the police officials is alleged against the applicants but their physical presence. As such, he would claim that invoking of provisions of Section 120B of IPC against the applicants are not satisfied. He would further claim that even the ingredients of Section 307, 395, 397 of IPC cannot be inferred against the applicants.

4. While countering aforesaid submissions, learned APP would urge that name of co-accused Sanket is

specifically - mentioned in a statement of eye witnesses. He further claimed that applicants formed a group with an intention to commit the offence thereby assaulting the public servant who were discharging their duties. According to him, prima-facie involvement of the applicants can be inferred.

5. Considered submissions.

6. Applicants before this Court are accused Nos.10, 11 and 12 who have suffered incarceration for more than nine months.

7. Perusal of the investigation papers though speaks of their physical presence on the spot of the incident, however, no specific role is attributed to each of them in the active commission of the offence under Section 307 and 353 of IPC or otherwise.

8. Apart from above, I am informed that there are no criminal antecedents against the applicants and test of identification parade was also conducted, in my opinion, case for bail is made out.

9. Applicants are directed to be released on bail in Crime No.1-12 of 2021 registered with Gholwad Police Station for the offence punishable under Sections 395, 397, 307, 353, 332, 326, 341, 427, 120B of IPC and Section 65(a) (e) of the Maharashtra Prohibition Act on executing P. R. bond of Rs.15,000/- each with one or more sureties in the like amount.

10. If applicants are found involved in similar type of offence, liberty to move for cancellation of bail.

11. Till the charge is framed, applicants shall remain outside the revenue jurisdiction of the Palghar district.

12. Applicants shall neither influence the witnesses in any manner nor tamper with the evidence.

13. As such, application stands disposed of."

For similar reasons, the applicant can be enlarged on bail.

5. Learned APP while opposing the application submits that there are criminal antecedents against the present applicant.

6. I have gone through the nature of the antecedents. The antecedents are mostly under the Bombay Prohibition Act. The antecedents are not such that the applicant be deprived of getting the facility of bail. However, while granting bail to the applicant, some conditions need to be imposed having regard to the nature of the antecedents. Hence, the following order :-

ORDER

(a) The application is allowed.

(b) The applicant- Yogesh Arjun Varli @ Gajani in connection with C.R. No. 12 of 2021 registered with Gholwad Police Station shall be released on bail on his furnishing P.R. Bond of Rs.25,000/- with one or more sureties in the like amount.

(c) The applicant shall attend the Investigating Officer of the Gholwad police station once in a month every first Monday of the month between 11.00 a.m. and 1.00 p.m.

(d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.

(e) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

(f) Except for the purpose of attending the trial Court on the dates fixed and reporting to the Investigating Officer, the applicant shall not enter in Union Territory of Daman and Diu; District- Valsad, State- Gujarat; District- Palghar and Nashik, State- Maharashtra; till conclusion of the trial.

7. The application is disposed of.

(M. S. KARNIK, J.)