

CRIMINAL BAIL APPLICATION NO.1383 OF 2022

V/s.

Mr. A.A. Palkar-APP for the State.

DATE : 30th October 2023.

PC:

1. The applicant who is accused no. 4 in Crime bearing No. 495/2020 registered with Mankhurd Police Station, for the offences punishable under sections 302, 363, 364, 120(B) read with 34 of IPC has made this application for bail.

2. Learned advocate for accused no. 4 submitted that the accused nos. 1 and 3 have been released on bail. Learned advocate pointed out that the role attributed to the accused nos. 1 and 3 was more serious than the role attributed to accused no. 4. Learned advocate pointed out that in the order passed by a co-ordinate bench of this Court in bail application no. 1669 of 2022 (Coram: Anuja

Prabhudessai, J) the conduct of the investigating officer was seriously criticized on account of his lackadaisical approach in conducting the investigation. Learned advocate submitted that not a single witness has attributed any role to the accused no. 4 in actual assault on the deceased. Learned advocate submitted that on the ground of parity with accused nos. 1 and 3, the accused no. 4 is entitled for bail.

3. Learned APP submitted that the presence of the accused no. 4 on the spot has been established on the basis of the statements of the eye witnesses. Learned APP submitted that the evidence complied in the charge-sheet is sufficient to *prima facie* establish the complicity of the accused in this crime. Learned APP further submitted that considering the dominant position of the accused and the vulnerable position of the witnesses, the possibility of tampering with the prosecution evidence cannot be ruled out.

4. I have gone through the record and proceedings. I have perused the bail order in the matter of accused nos. 1 and accused no. 3. It is seen on the perusal of the record that a specific role has been attributed to the accused nos. 1 and 3. It is further seen that no role was attributed to accused no. 4 in the assault.

5. It is the case of the prosecution that the accused no. 4 had

carried deceased in auto-rickshaw to the place of incident and on the spot the deceased was mercilessly beaten by the remaining co-accused. It is the case of the prosecution that accused no. 4 was thus a facilitator in the crime.

6. In this case witness- Varsha has stated that she was not knowing the accused before the incident. The Test Identification Parade was not conducted. The CCTV footage was collected by the I.O. However transcript of the CCTV footage was not taken. It is further seen on perusal of the record that in the CCTV footage the accused Faizal Patel was seen assaulting the deceased. It is apparent that the accused no. 4 was not seen assaulting the deceased in the CCTV footage. The accused no. 4 has been jail since 2021. I am informed that despite filing charge-sheet there has been no progress in the trial. Even charge has not been framed. There is no statement in the reply as to the approximate time taken for the completion of the trial. It is seen that the trial may take it's own time for completion. In the teeth of material complied in the charge-sheet, in my view further incarceration of accused is not warranted. The ground of the parity put forth by the accused no. 4 is available to him. The apprehension of the APP can be taken care of by imposing suitable conditions. Accordingly, the

application is allowed on the following terms and conditions:-

ORDER

- i) The applicant, in connection with C.R. No. 495/2020 registered with Mankhurd Police Station, shall be released on cash bail in the sum of Rs. 40,000/- for a period of four weeks;
- ii) The applicant shall, within the said period of four weeks, furnish PR bonds in the sum of Rs. 40,000/- with one or two sureties to the like amount;
- iii) The applicant shall report to Mankhurd Police Station on the first day of every month till framing of the charge.
- iv) The applicant shall not directly or indirectly threaten or pressurize the witnesses and informant.
- v) The applicant shall not tamper with prosecution evidence in any manner.
- vi) The applicant shall keep the Investigating Officer informed of his current address and mobile contact numbers, and/or change of residence or mobile details, if any, from time to time.

7. The application stands disposed of.

(G.A. SANAP, J)