

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL BAIL APPLICATION NO. 1565 OF 2020**

Gurunath Pandharinath Mhatre

... Applicant

V/s.

State Of Maharashtra

... Respondent

Mr. Amin Solkar a/w Adv. Umang Shah for Applicant.

Mrs. M. H. Mhatre, APP for Respondent-State.

Mr. Tanmay S. Karwa i/b Mr. P. G. Sarda for Intervener.

CORAM : A.S. GADKARI, J.**DATE : 2nd MARCH, 2023.****P.C. :**

1. Heard Mr. Solkar, learned Advocate for Applicant, Mrs. Mhatre, learned APP for Respondent-State and Mr. Karwa learned Advocate for Intervener.

This is third successive Application for bail by the Applicant. The first Application i.e. Criminal Bail Application No. 1954 of 2016 preferred by the Applicant was rejected by this Court by Order dated 24th October, 2016. In para No.5 of the said Order it is observed that, Applicant was instrumental in instigating the other accused persons in committing assault on deceased Krishna Patil and other injured persons. The material on record i.e. the statements of witnesses would indicate that, Applicant used sword in assaulting Bajrang Patil who has suffered injuries. That, the role attributed to

the Applicant is not only limited to assault on Bajrang Patil with sword but he was also instrumental in instigating co-accused in committing the assault on the deceased and other injured persons. Therefore, taking into consideration the complicity of the Applicant in the crime his first Application was rejected by this Court.

2. The successive Application for bail i.e. Bail Application No. 2164 of 2018 preferred by Applicant was dismissed on 17th December, 2018 as withdrawn with liberty to file a fresh Application for bail before the Trial Court, if the trial arising out of C. R. No. I-218 of 2015 registered with Bhiwandi Taluka Police Station, District Thane culminated into Sessions Case No. 24 of 2016 does not conclude within a period of six months from 17th December, 2018.

As the trial of the said case did not conclude within reasonable period, Applicant again preferred Bail Application below Exh-98 before the Trial Court. The Trial Court by its Order dated 5th September, 2019 has rejected the said Application.

In this brief premise, present Application is filed under Section 439 of the Code of Criminal Procedure for bail.

3. In the present case, the prosecution has relied on 45 witnesses as per the list of witnesses submitted alongwith charge-sheet before the Trial Court. PW-1 has been examined by the prosecution on 11th April, 2019 and

PW-18 has been examined on 28th February, 2023. Thus, in last about four years, the prosecution has examined only 18 witnesses. Prosecution is yet to examine approximately 27 witnesses in support of its case. By the speed at which the trial of the present case is progressing it is apparent that, it may not be concluded in near future. Applicant has been arrested in the present crime on 14th September, 2015 and for last about 7½ years he is undergoing pre-trial incarceration. This fact itself is sufficient to enlarge the Applicant on bail during the pendency of trial of present case.

4. After taking overall view of the matter, this Court is of the opinion that, Applicant can be released on bail.

Hence the following Order :

- (i) Applicant be released on bail in Sessions Case No. 24 of 2016, arising out of C.R. No. I-218 of 2015 registered with Bhiwandi Taluka Police Station, District Thane, on his furnishing PR. bond of Rs.50,000/- with one or two solvent local sureties in the same amount.
- (ii) Applicant shall attend Bhiwandi Taluka Police Station, District Thane on every alternate Monday of the month between 10.00 am to 12.00 noon initially for the period of one year and thereafter on every first Monday of every calendar month till the conclusion of the trial.

(iii) Applicant shall not in any way directly or indirectly attempt to contact, pressuize or threaten either complainant or any of the witnesses in the present case.

5. Application is allowed in the aforesaid terms.

[A.S. GADKARI, J.]