



Diksha Rane

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

BAIL APPLICATION NO.2441/2023

SHRIVARDHAN @ DADA TIKONE
VS.

..APPLICANT

THE STATE OF MAHARASHTRA

..RESPONDENT

Adv. Sana Raees Khan a/w. Adv. Aniket C. Pardeshi and Adv.
Aditya Parmar for the applicant.
Mr. N. B. Patil, APP for the State.
PN 2205, Paud Police Station.

CORAM : M. S. KARNIK, J.

DATE : OCTOBER 10, 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 307, 143, 147, 148, 149, 323, 326, 504, 506, 109, 120-B of the Indian Penal Code (hereafter 'IPC' for short) read with Sections 27 read with 4 of the Indian Arms Act read with Sections 135 read with 37(1) of the Maharashtra Police Act registered on 10/2/2021 vide C.R. No.44/2021 with Paud Police Station, Pune.
- 3.** The date of the incident is 10/2/2021. The accusations

as they stand against the present applicant are serious in nature. The assault has been brutal.

4. Learned APP submitted that the applicant has used sword for inflicting injury not only on one but three persons. The assault by the sword has been on vital parts of the body. Furthermore, it is pointed out by learned APP that both wrists of one of the injured witness Aakash Shinde has been completely chopped off. The accusations are, no doubt, serious. There are eye witnesses to the incident. Learned APP further submitted that against the members of the complainants side, the applicant in the year 2018 is accused of committing the offence punishable under Section 307 of the IPC. It is submitted that while on bail, the applicant has committed the present offence and had come fully prepared for this purpose. There are in all ten accused who were armed with swords, koytas and sickles.

5. Learned counsel for the applicant relied upon the decision of the Hon'ble Supreme Court in the case of **Bhagirathsinh s/o. Mahipat Singh Judeja vs. State of Gujarat**¹. In paragraph 5 Their Lordships observed thus:-

¹ (1984) 1 SCC 284

“5. It appears that the State of Gujarat filed Miscellaneous Criminal Application No. 1724 of 1983 in the High Court of Gujarat seeking cancellation of the order granting bail to the appellant. A learned Single Judge of the High Court held that once a prima facie case is established, the learned Sessions Judge ought to have taken into consideration the nature and gravity of the circumstances in which the offence is committed. The charge against the appellant is that he has committed an offence punishable under Sec. 307 I. P. C. and Sec. 135 of the Bombay Police Act and even on the date of hearing of this appeal before us on November 18, 1983, the Court was informed that the victim is alive and at present there is no danger to his life. Nearly 3 months have rolled by from the date of the offence. We fail to understand what the learned Judge of the High Court desires to convey when he says that once a prima facie case is established, it is necessary for the court to examine the nature and gravity of the circumstances in which the offence was committed. If there is no prima facie case there is no question of considering other circumstances. But even where a prima facie case is established, the approach of the court in the matter of bail is not that the accused should be detained by way of punishment but whether the presence of the accused would be readily available for trial or that he is likely to abuse the discretion granted in his favour by tampering with evidence. We would have certainly overlooked this aspect of the matter if the approach of the learned judge was otherwise one which would commend to us. It however appears that the learned judge was impressed by some of the most irrelevant considerations which prima facie emerge from the following observations of the learned judge which permits his whole order running into about 13 pages.”

6. My attention is also invited to the decision of the Hon'ble Supreme Court in the case of **Vivek Kumar vs. State of U.P.**². In paragraph 2 Their Lordships observed thus:-

"2. We are told that the appellant is in jail from 4-4-1998 in connection with offences under Sections 307 and 395 read with Section 149 of the Indian Penal Code. It is quite a long period that he has been in custody without commencing the trial. There is no need to detain him further in custody and therefore we are inclined to release him on bail, notwithstanding the suppression of certain factual position when the bail application was filed. It would not have been done by the appellant. We feel that lapses on the part of the counsel should not in this case be allowed to prejudice the appellant who is languishing in jail."

7. My attention is then invited to the order dated 29/3/2023 passed by Hon'ble Supreme Court in the case of **Sambhaji @ Rohit Anna Bhosale vs. The State of Maharashtra**³. The order reads thus:-

"Leave granted.

Heard the learned counsel appearing for the appellant and learned counsel appearing for the respondent-State.

The appellant has undergone incarceration for a period of about 2½ years. The main offence alleged is under Section 307 the Indian Penal Code, 1860.

There are two other offences registered against the appellant in

2 (2000)9 SCC 443

3 SLP (Crl.) No.1896/2023)

which he has been already enlarged on bail. The trial has not commenced. Therefore, a case is made out for grant of bail. Accordingly, we direct that the appellant shall be produced before the Sessions Court within a period of one week from today. The Sessions Court shall enlarge the appellant on bail on such terms and conditions as may be found appropriate.

The appeal is allowed accordingly. “

8. The applicant was arrested on 19/2/2021. The applicant is in custody for more than two years and eight months. I am informed that even the charge has not been framed. The investigation is complete. The charge-sheet has been filed. In my opinion, the applicant can be enlarged on bail by imposing stringent conditions considering the period of incarceration the applicant has undergone as an undertrial with no possibility of the trial concluding any time soon. Looking at the past history, even the witnesses need to be protected. The applicant does not appear to be a flight risk. Though there are antecedents, in my opinion, the same are not sufficient to deprive the applicant the facility of bail. I propose to impose stringent conditions while enlarging the applicant on bail. The applicant in my opinion should not be incarcerated any further as this would be a pre-trial punishment. The applicant will face the consequences if

ultimately he is found guilty by the trial Court.

9. Learned counsel on instructions makes a statement that the applicant will not enter the areas of Pune District till the trial concludes. It is further stated on instructions that the applicant shall reside at Badlapur, District Thane with his close relative till the conclusion of the trial. Statements are accepted. The address to be furnished to the trial Court as well as the investigating officer. Hence, the following order :-

ORDER

(a) The application is allowed.

(b) The applicant- Shrivardhan @ Dada Tikone in connection with C.R. No.44/2021 with Paud Police Station, Pune, shall be released on bail on his furnishing P.R. Bond of Rs.50,000/- with one or more local sureties in the like amount.

(c) The applicant shall attend the Badlapur police station, twice a week, on every Tuesday and Saturday of the week, between 10.00 a.m. and 1.00 p.m. If the applicant is required to attend the trial Court on the date of attendance, he shall intimate the Badlapur police station in advance and shall mark his attendance on the immediate next date.

(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 attending the trial in this case and other cases, the applicant shall not enter Pune District after being released on bail, till the trial concludes.

(g) Till the trial concludes, the applicant shall reside in Badlapur, District Thane.

(h) If it is found that the applicant has entered Pune district in breach of the conditions imposed, the consequence of cancellation of this bail shall follow. The prosecution is at liberty to file the application for cancellation of bail which shall be heard on priority.

(i) The applicant shall attend the trial regularly.

(j) The trial is expedited. The applicant shall co-operate with the trial Court and shall not seek unnecessary

adjournments.

(k) The applicant shall surrender his passport, if any, to the investigating officer.

10. The application is disposed of.

(M. S. KARNIK, J.)