

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

BAIL APPLICATION NO. 3608 OF 2022

Vikas Sitaram Shinde ...Applicant

vs.

The State of Maharashtra ...Respondent

**ALONG WITH
BAIL APPLICATION NO. 3730 OF 2022**

Vijay Sitaram Shinde ...Applicant

vs.

The State of Maharashtra ...Respondent

Mr.Saurabh Butala a/w Mr.Saiprasad Wadkar–Advocates for Applicant in Bail Application No. 3608 of 2022.

Mr.Harshad Sathe a/w Mr.Saurabh Butala – Advocates for Applicant in Bail Application no.3730 of 2022.

Mr.H.J.Dedhia – APP for Respondent-State.

CORAM : S. M. MODAK, J.

DATED : 8TH AUGUST 2023

P. C. :

BAIL APPLICATION NO. 3608 OF 2022

1. Heard learned Advocate Shri.Sathe for the Applicants and learned APP.
2. After hearing both of them, when this Court was not inclined

to grant bail to Vikas Shinde, Mr.Sathe seeks liberty to withdraw his Application. Accordingly, it is disposed of.

3. If there is no progress in the trial, he can ask for bail after one year.

BAIL APPLICATION NO. 3730 OF 2022

4. At about 23.45 to 23.50, when the witness Akshay Bhalerao was returning home, at Samrat Ashok Chowk, he was intercepted by 5 Accused persons and present Applicant – Vijay is one of them. Vijay slapped him. Out of 4 witnesses, Akshay called his brother – Vishal Bhalerao. After Vishal came there, he was assaulted by all the Applicants. Accused – Pratik Thakare, Vijay Shinde i.e. present Applicant and Vikas Shinde were possessed with certain sharp edged weapon. This Applicant instigated others to kill Vishal Bhalerao and the three persons assaulted Vishal. They have pierced a knife in his stomach.

5. Vishal was taken to a private hospital – Surya Multispeciality (Page No.53). Whereas, brother Akshay has taken treatment at Bai Rukminibai Hospital, Kalyan – KDMC. Their certificates are on Page No.53 and Page No.77 respectively. The Bazarpet Police Station have registered an FIR on 13th December, 2021 under Sections 307,

323, 143, 148, 149 of Indian Penal Code, 1860 [“IPC”] and under Sections 37(1) and 135 of Maharashtra Police Act, 1951 on the complaint of injured – Vishal Bhalerao.

6. Charge-sheet is filed. Following submissions are made :-

- (a) If Akshay can go to a Government hospital why not his brother Vishal.
- (b) There is a statement of one Ramswarup Patel who has also witnessed the incident. He has also said about assault on Vishal Bhalerao. But, he has only taken the name of Vikas i.e. co-accused and not taken the name of Vijay.
- (c) There is a C.C.T.V, footage on Page No.70 sent by the Police. Panchnama is on Page No.69. The witnesses have identified 3 persons and one of them is present Applicant. However, they have not said that those 3 persons were possessing any knife.

7. Parity is claimed because co-accused Pratik is granted bail by the Kalyan Sessions Court on 16th March, 2022.

8. Learned APP made the following submissions :-

- (a) Variance in between the statement of two sets of witnesses cannot be considered at this stage.
- (b) Any shortcoming in C.C.T.V, footage panchnama cannot be considered at this stage.
- (c) First-Informant has taken the name of present Applicant along with the role played by him.
- (d) Report given by Bazarpeth Police Station is taken on

record against the present Applicant – Vijay.

- (e) There are 6 cases registered at various Police Stations.

9. To rebut the contention about antecedents, Mr.Sathe relied upon the following judgments :-

- (i) Prabhakar Tewari V/s. State of Uttar Pradesh and Another¹
- (ii) Raosaheb Patole V/s. The State of Maharashtra²
- (iii) Maulana Mohammed Amir Rashadi V/s. State of Uttar Pradesh and Another³

10. It is true that criminal antecedents is one of the factors to be considered while deciding a Bail Application. How much weightage can be given to the criminal antecedents depends upon the facts of the case. There may be following contingencies may occur :-

- (a) If there are sufficient materials showing the involvement in the crime involved. Criminal antecedents may not even be considered.
- (b) If there are no materials showing the involvement in the crime involved, but to what extent the criminal antecedent can be considered is a question of fact.
- (c) There may be good materials, so also, criminal antecedents.

11. In the present case, I accept the contention raised by

1 (2020) 11 Supreme Court Cases 648

2 Criminal Bail Application No.373 of 2011 : 24th March, 2011 : Bombay High Court

3 (2012) 2 Supreme Court Cases 382

Mr.Sathe about lacunae in the materials and the benefit of parity. Co-accused Pratik having a same role is granted bail by the Additional Sessions Judge – Kalyan. There is also recovery of two wheeler used for the purpose of commission of crime by co-accused Pratik.

12. So, I think just because criminal antecedents are there, bail cannot be refused. Strict conditions can be imposed. Hence, order :-

ORDER

- (i) Application is allowed.
- (ii) Applicant – Vijay Sitaram Shinde be released on bail in connection with C.R. No. 428 of 2021 registered with Bazarpeth Police Station – Thane City for the offences punishable under Sections 307, 323, 143, 148, 149 of IPC and under Sections 37(1) and 135 of Maharashtra Police Act, on furnishing personal bond and surety bond of Rs.25,000/-.
- (iii) He is directed not to enter Kalyan Taluka till completion of the trial.
- (iv) Applicant not to threaten the Prosecution witnesses or to allure them in any manner.
- (v) Applicant to give attendance to Bazarpeth Police Station – Thane City on first Monday of every month from 10.00 to 12.00.
- (vi) Applicant is only permitted to enter Kalyan Taluka for attending the Court and Police Station.

(vii) In case of breach of any of the conditions, the bail of the Applicant is liable to be cancelled after notice.

13. These are my *prima facie* observations. Let the learned trial Court need not be influenced by them.

14. Application is disposed of in the aforesaid terms.

15. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]