



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

30 BAIL APPLICATION NO. 143 OF 2024

AJINKYA PRADIP NAIK
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. J. M. Murkute.
APP for Respondent/State : Mr. Mukesh K. Goyanka.
Advocate to assist PP : Mr. Sagar S. Ladda.

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CORAM : **SANJAY A. DESHMUKH, J.**

DATE : 26th February, 2024.

P.C.:

1 Heard.

2 This is an application, under Section 439 of the Code of Criminal Procedure, 1973 (for short "the Cr.P.C."), for grant of regular bail in connection with Crime No.658 of 2023, registered with Hingoli City Police Station, District Hingoli, for the offences punishable under Sections 307 and 120-B read with 34 of the Indian Penal Code and under Section 3/27 of the Arms Act.

3 Informant Satish Manikrao Thenge, PSI of Police Station Hingoli, lodged a report that on 1st August, 2023 he got information that firing took place in the area of Hingoli, Zilla Parishad Office, District

Hingoli. Then he went there and he came to know that Pappu Chavan is admitted in the hospital. He observed the spot of incident and found two live cartridges, one round of fire and one used Case of the bullet. One mobile handset was also found there, in which there was recording of an audio clip. He took the CCTV footage of that area in which it was noticed that this applicant and other co-accused were seen. He also heard the conversation regarding that crime, which was found in the mobile handset. Therefore, he arrested this applicant and it was noticed that accused assaulted Pappu Chavan because of earlier dispute on account of daughter of one Kanbale. Therefore, in order to take revenge, they assaulted Pappu Chavan.

4 Later on, during recording of the statements of witnesses, it was revealed that Pappu Chavan was having good reputation. It is further revealed during the investigation that in the statement of witness that local MLA Santosh Bangar is involved in this crime and Ram Kadam and Shyam Kadam alongwith him hatched the conspiracy to eliminate Pappu Chavan as he was having good reputation and popular in that vicinity/area.

5 The learned counsel for applicant submitted that though there is name of the applicant in the report, he is falsely implicated in the crime. He pointed out the details of CCTV footage in which the

names of other accused are mentioned, however, applicant's name is not mentioned. He further pointed out the statements of witnesses and submitted that the applicant is falsely implicated in this crime. It is lastly prayed to allow the application.

6 The learned APP for the State and the learned counsel assisting to the prosecution strongly opposed the application and submitted that the applicant is involved in the serious crime. Because of the pressure of MLA Santosh Bangar, the police are not properly investigating the crime. Therefore, Criminal Writ Petition No.1329 of 2023 is filed before this Court for intervention of the Court regarding investigation of the said crime. The learned counsel assisting to the prosecution further pointed out that the statement of informant and his complaint was sent to the Home Minister clarifying that this applicant and others are involved in this crime. He further pointed out the statement of witness Sumit Madhukar Dhike. In his statement, he has stated that the applicant was involved in the crime. Some videos were viral in which the applicant was seen by him while he was firing by the firearm from the backside. The learned counsel assisting to the prosecution also pointed out the injury certificate of Pappu Chavan and submitted that even injury certificate of Pappu Chavan is also not properly brought before the Court. It is lastly prayed to reject the application.

7 Perused the charge-sheet, FIR as well as the statements of witnesses. The name of this applicant is mentioned in the FIR as he was seen in the CCTV footage. However, from the details of the CCTV footage recorded in the *Panchanama*, the name of this applicant is not mentioned. There are serious allegations against the investigating agency that one MLA is involved in the crime and therefore, the applicant's name is not mentioned in the details of CCTV footage which noticed by the *Panchas*. If the medical certificate is considered alongwith the statement of witness Sumit Madhukar Dhike recorded on 5th August, 2023, then it can be easily inferred that there is independent technical evidence of CCTV footage alongwith photo of this applicant with co-accused. Thus, there is *prima-facie* material against this applicant that he made fire on Pappu Chavan from the backside. However, Pappu Chavan could save himself.

8 In the facts and circumstances of the present case, it would be proper to rely upon the following two authorities:-

1) In ***Deepak Yadav Vs. State of Uttar Pradesh and another, (2022) 8 Supreme Court Cases 559***, the Honourable Supreme Court in paragraph 22 held as under:-

“22. As reiterated by the two-Judge Bench of this Court in *Prasanta Kumar Sarkar v. Ashis Chatterjee*, (2010)

14 SCC 496 : (2011) 3 SCC (Cri) 765, it is well-settled that the factors to be borne in mind while considering an application for bail are:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by grant of bail.”

II) In *Shahzad Hasan Khan Vs. Ishtiaq Hasan Khan and another*, (1987) 2 Supreme Court Cases 684, the Honourable Supreme Court in paragraph 6 held as under:

“6. We are constrained to observe that Justice D. S. Bajpai refused to grant the prayer and proceeded to grant bail simply on the ground that the liberty of a citizen was involved which is the case in every criminal case more particularly in a murder case where a citizen who let alone losing liberty has lost his very life. Another ground for granting bail was that trial was delayed, therefore the

accused was entitled to bail. This also cannot be helped if a litigant is encouraged to make half a dozen applications on the same point without any new factor having arisen after the first was rejected. Had the learned Judge granted time to the complainant for filing counter-affidavit, correct facts would have been placed before the court and it could have been pointed out that apart from the inherent danger of tampering with or intimidating witnesses and aborting the case, there was also the danger to the life of the main witnesses or to the life of the accused being endangered as experience of life has shown to the members of the profession and the judiciary, and in that event, the learned Judge would have been in a better position to ascertain facts to act judiciously. No doubt liberty of a citizen must be zealously safeguarded by court, nonetheless when a person is accused of a serious offence like murder and his successive bail applications are rejected on merit there being prima facie material, the prosecution is entitled to place correct facts before the court. Liberty is to be secured through process of law, which is administered keeping in mind the interests of the accused, the near and dear of the victim who lost his life and who feel helpless and believe that there is no justice in the world as also the collective interest of the community so that parties do not lose faith in the institution and indulge in private retribution. Learned Judge was unduly influenced by the concept of liberty, disregarding the facts of the case.”

9 Considering the role, nature of this crime and the persons involved in the crime as well as the fact that the informant filed criminal writ petition for directions for proper investigation, if the applicant is released on bail, there is possibility of commission of same nature of crime. The possibility of pressurizing the witnesses and tampering with the evidence also cannot be ruled out. Therefore, considering the ratio

and guidelines laid down in the above case laws, the applicant is certainly not entitled for bail. The application deserves to be rejected. The bail application is, therefore, rejected.

[SANJAY A. DESHMUKH, J.]

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