



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

904 BAIL APPLICATION NO. 139 OF 2024

Sahil Madansinh Thakur @ Mamidwar (Sahil Kundansinh Thakur
(Mamidwar) In charge sheet)

VERSUS

The State Of Maharashtra

Advocate for Applicant : Mr. R.S. Deshmukh, senior advocate i/b Mr.
Devang R. Deshmukh, Ms. Rakshanda Jaiswal and Mr. Vishal
Chavan

APP for Respondents: Mr. Mukesh K. Goyanka

CORAM : SANJAY A. DESHMUKH, J.
DATED : 16th FEBRUARY, 2024.

PER COURT :-

1. Heard both sides.
2. This is an application for granting bail under Section 439 of the Cr.P.C. in connection with crime No. 38 of 2023 registered with Itwara police station, Nanded, District Nanded for the offences punishable under Sections 307 r/w 34 of the I.P.C. and Sections 3/25, 7/27, 25(1-A) of the Arms Act. The applicant's bail application below Exh.8 in Sessions Case No. 70 of 2023 with similar prayer came to be rejected by the learned Additional Sessions Judge, Nanded by order dated 30.09.2023.
3. It is averred in the report that on 3.2.2023 at about 2.00 p.m. the informant was proceeding to Vajirabad. The applicant and his father were following him. Thereafter, at about 4.00 p.m. when the informant reached near Khandelwal Sweets, the applicant and his

father fired gunshots on him. But one Gajanan Panchal, who was pillion rider on his motor cycle, pushed the informant on the ground. Therefore, he fell down and saw that the applicant and his father were firing on him by Pistol with an intention to kill him. He sustained an injury on the right elbow. He also sustained injury to his rib. Thereafter, he ran away and went into one house and latched the door. The informant made phone call to the police. He was admitted in the hospital for treatment.

4. Earlier to that on 16.10.2021 the applicant, his father Gajanan, the brother viz. Chetan and other 2 to 3 persons assaulted him by iron rod and sword. Therefore, crime No. 272 of 2021 was registered against the applicant and others.

5. Learned advocate for the applicants submitted that the applicant is falsely implicated in the crime. He was not present there at the time of incident. He was sitting near to his house at the time of incident, which can be seen from CCTV footage. Learned advocate for the applicant further submitted that though there is reference of CCTV footage, which was seen by the learned Additional Sessions Judge, Nanded, no such reasons are given in the impugned order while rejecting the bail application. Learned advocate for the applicant further pointed out the statements of witnesses and injury certificate of the informant. The applicant is falsely implicated in the crime as he was not present there. It is lastly prayed to allow the application.

6. Learned A.P.P. strongly opposed the application and submitted that in earlier crime the bail was granted to the applicant and other accused persons. The applicant has misused the liberty and again tried to commit murder with the help of others. Only because the informant was alert, he could have saved himself. Learned A.P.P. further pointed out the statements of witnesses and submitted that the distance between the house of this applicant and spot of incident is not more than one and half kilometer. Therefore, CCTV footage is of no use to establish the defence of alibi that the applicant was not present there. Learned A.P.P. for the respondent submitted that considering the criminal antecedents of the applicant, there is possibility of commission of similar nature of crime and threatening to the prosecution witnesses as well. He therefore, prayed to reject the application.

7. Perused the charge sheet, particularly the report and the statements of witnesses. The CCTV footage produced on behalf of this applicant was displayed in the open court in presence of both sides. The CCTV footage produced on behalf of the applicant shows its starting time as 4.45 p.m. As per the prosecution story, the incident took place in between 4.30 p.m. to 5.00 p.m. Two pistols are seized at the instance of main accused Gajanan and his son Sahil (juvenile in conflict with law), who produced the said pistols before the police officer concerned, which were seized in presence of

panchas there. But only because the pistols were seized at the instance of the other co-accused, this applicant cannot be labelled as innocent. Considering distance of one kilometer between the spot of incident and house of this applicant, CCTV footage cannot be prima facie accepted as evidence of non involvement of this applicant in the crime. There is no evidence that earlier to the incident in question i.e. before 4.15 p.m. the applicant was there in the CCTV footage to infer his false implication. Therefore, at this stage, it cannot be meticulously considered and held that the applicant was not present at the time of incident because it is a matter of evidence.

8. In the case of ***Deepak Yadav Vs. State of Uttar Pradesh and another, (2022) 8 SCC 559***, the Hon'ble supreme Court in para 22 has laid down eight guidelines. Para 22 is reproduced 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.*

9. In the case of ***Shahzad Hasan Khan Vs. Ishtiaq Hasan Khan and another, (1987) 2 SCC 684***, para 6

"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.”

10. Considering the ratio and guidelines in the above case laws and the entire material, *prima facie*, this court found that there is material against the applicant. He has misused the liberty of bail granted to him in the earlier crime and attempted to commit murder of the informant. Thus, if the applicant is released on bail he will certainly misuse the liberty. The said overt act of the applicant shows his behaviour and character prone to commit such crime. There is a possibility of repeating same nature of crimes. Therefore, there is a reasonable apprehension that if the applicant is released on bail, he may influence the witnesses. This court is of the view that the informant, who is victim of the crime is assaulted for two times shall not feel that there is no justice in the world as held in the case of ***Shahzad Hasan Khan (supra)***.

11. Considering all these aspects and the role of the applicant that he attempted to commit murder of the informant with the pistol his overt act is a serious crime of attempt to commit murder.

12. The learned trial court did not give reasons as to CCTV footage relied upon by accused though it was watched in the open court. It is a judicial duty of the Court to apply judicial mind to the material facts of the case and give plausible reasons as to its *prima*

facie existence, non existence, acceptability or non acceptability. Only a cursory reference is there in the order refusing bail, which is not sufficient. The litigants have a right to know the reasons of the judgment or order. The learned trial court failed to give reasons regarding CCTV footage. However, the argument of learned senior advocate in this regard is acceptable that reasons are not given by the trial court regarding CCTV footage. However, there is no such prima facie evidence that applicant was continuously sitting there before the incident in question to infer that he was not involved in the crime in question. However, his rest of the arguments are not acceptable for the reasons stated above.

13. The application therefore, deserves to be rejected. It is rejected accordingly.

14. It is made clear that the observations made in this order are prima facie in nature and the trial court shall not get influenced while conducting the trial.

(SANJAY A. DESHMUKH, J.)

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