



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

905 BAIL APPLICATION NO. 187 OF 2024

1) Ganesh Diwan Kharade
2) Arun Rajendra Pawara
VERSUS
The State of Maharashtra

Advocate for Applicants : Mr. Sushil P. Pandit
APP for Respondents: Mr. Satish A. Gaikwad
Advocate to assist the A.P.P. : Mr. Bhushan Mahajan

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

PER COURT :-

1. Heard both sides. When this court expressed disinclination to grant bail to applicant No.1 Ganesh Diwan Kharade, learned advocate for the applicants, on instructions, seeks leave to withdraw the application of applicant No.1, with liberty to file application for bail before the trial, if the trial is not concluded within a period of one year from today. Leave granted. The application of applicant No.1 stands disposed of as withdrawn with liberty as prayed for.

2. In so far as applicant No.2 Arun Rajendra Pawara is concerned, he is seeking bail under section 439 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") in connection with crime No. 450 of 2023 registered with Shahada police station, District Nandurbar, for the offences punishable under Sections 302, 307, 447, 143, 147, 148 and 149 of the I.P.C., under Sections 3, 25 and 4

of the Arms Act, 1959 and under Sections 37(1), 37(3), 135 of the Maharashtra Police Act. His application with similar prayer bearing criminal bail application No. 178 of 2023 came to be rejected by the learned Additional Sessions Judge, Shahada, vide order dated 25.09.2023.

3. It is averred in the report that the applicant and his other family members, on account of dispute of agricultural land, assaulted the informant and their family members by country made pistol, sword and sticks. In that incident, two persons viz. Avinash and Sukhram died. Co-accused Ganesh Diwan Kharade used sword in the assault whereas applicant Arun Rajendra Pawara used stick and assaulted the witnesses. Therefore, report was lodged. Counter crime is also registered.

4. Learned advocate for the applicant submitted that the applicant is falsely implicated in the crime only there was earlier enmity on account of agricultural land. The applicant has roots in the society, he will not flee away from trial, the trial will take a long period. Three women accused are released on bail. Considering the role of this applicant, it is lastly prayed to allow the application.

5. Learned A.P.P. for the respondent-State has strongly opposed the application by pointing out the statements of witnesses, post mortem report, seizure panchanama of weapons i.e. country made

pistol, sword and sticks, which were seized under Section 27 of the Indian Evidence Act. He lastly prayed to reject the application.

6. Learned advocate Mr. Mahajan, who is assisting to the A.P.P. strongly opposed the application and pointed out statements of witnesses. He submitted that two murders are committed by the applicant and other accused in furtherance of their common intention and object. It is serious case of murder for which the applicant and the other accused are likely to be sentenced to suffer imprisonment for life. Learned advocate placed reliance on the judgment of the Hon'ble Supreme Court in the case of ***Brijmani Devi vs. Pappu Kumar, reported in 2022 Cri.L.J. 3218***, in which in guidelines (g) of para 29, it is observed as under:-

“g) Thus, there is a likelihood of the respondent accused absconding or threatening the witnesses if released on bail which would have a vital bearing on the trial of the cases.”

7. Learned advocate assisting to the A.P.P. submitted that considering the nature of the crime, if the applicant is released on bail, he will certainly pressurize the witnesses and tamper with the evidence. It is lastly prayed to reject the application.

8. Perused the charge sheet, particularly the report, post mortem reports, statements of witnesses and injury certificates. The

role of applicant Arun is that he used stick and assaulted on some of the injured witnesses. He had not used deadly weapons like sword etc. The further custody of the applicant is not necessary. The trial will take a long period. The applicant has roots in the society. No doubt, he is residing in Madhya Pradesh, which is adjacent to district Nandurbar, for that the stringent conditions can be imposed that he shall deposit an amount of Rs.50,000/- in the trial court which shall be repaid to him after the conclusion of trial. It is only to secure his presence for the trial. Considering all these aspects, the applicant Arun Rajendra Pawara is entitled for bail on the principle that the bail is rule and jail is exception. The application therefore, deserves to be allowed on certain conditions. Hence, the following order.

O R D E R

- I. Application is allowed.
- II. The applicant Arun Rajendra Pawara, in connection with crime No. 450 of 2023 registered with Shahada police station, District Nandurbar, for the offences punishable under Sections 302, 307, 447, 143, 147, 148 and 149 of the I.P.C., under Section 3, 25 and 4 of the Arms Act, 1959 and under Sections 37(1), 37(3), 135 of the Maharashtra Police Act, be released on bail on furnishing personal bond of Rs.50,000/- with one surety of the like amount on following conditions:-
 - a) The applicant shall not tamper with the prosecution evidence and shall not pressurize the witnesses, in any

manner.

- b) The applicant shall not enter within the vicinity of village Malgaon, Post Chandsaili (Forest), Tq. Shahada, District Nandurbar, till the conclusion of trial.
- c) The applicant Arun shall deposit an amount of Rs.50,000/- in the trial court. The trial court is directed to keep the said amount in a fix deposit in any Nationalized bank, which shall be paid to the applicant after conclusion of trial, with interest.
- d) It is made clear that if any breach of the above conditions is committed by the applicant, the applicant would not be entitled for the said amount of Rs.50,000/-.
- e) If the trial court notices any breach of the above conditions, the trial court is at liberty to cancel the bail of the applicant Arun Rajendra Pawara and also confiscate the amount of Rs.50,000/- with interest without reference to this Court.

(SANJAY A. DESHMUKH, J.)

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