



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

906 BAIL APPLICATION NO. 205 OF 2024

ANKUSH TULSHIRAM CHAVAN
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Jitendra Vijay Patil.
APP for Respondent/State : Mr. Mukesh K. Goyanka.

...

AND

BAIL APPLICATION NO. 152 OF 2024

SHAIKH NAEEM @ NAIYYUM SK. QAYYUM
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Harshal Prakash Randhir & Mr. S. K. Agrawal.
APP for Respondent/State : Mr. Mukesh K. Goyanka.

...

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

DATE : 29th February, 2024.

P.C.:

1 Heard.

2 These are applications, under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail in connection with Crime No.424 of 2023, registered with Jamner Police Station, District Jalgaon, for the offences punishable under Sections 395 and 397 of Indian Penal Code and under Sections 3 and 25 of the Arms Act.

3 The report is lodged by informant Ganesh Ravindra Badgujar, who is a Manager of Shivnery hotel. It is averred in the report that on 23rd August, 2023 he was present in the said hotel. At about 08:00 pm, seven to eight persons alighted from Ertiga vehicle. Out of them, one pointed Gun on his head and demanded key of cash counter. Other accused were holding weapons like Kukary and wooden sticks. On being denied to hand over keys of cash counter, said robbers beat the informant on his leg and shoulder by wooden stick. The said robbers forcefully broken cash counter and taken away Rs.6,500/- therefrom. Thereafter, said robbers fled away by a Ertiga car. Therefore, a report was lodged.

4 The learned advocates for applicants submitted that the applicants are booked only on the suspicion. Applicant / Shaikh Naeem is not identified in the test identification parade. The applicants are ready to furnish bail. They will not flee away from the trial. The trial will take long period. The amounts recovered from these two applicants belonging to them and no any article / weapon is seized at the instance of applicant / Shaikh Naeem. It is lastly prayed to allow the applications.

5 The learned advocates for applicants are relying upon the following authorities:

- a) ***Apu Roy @ Raju Vs. State of Kerala*** (Bail Appln No.7059 of 2019) dated 15th October, 2019 (Kerala High Court), wherein in *G.Narasimhula Vs. Public Prosecutor, AIR 1978 SC 429*, the Honourable Apex Court held that the requirement for bail is merely to secure the attendance of the prisoner for trial. It would not be proper to deny bail to the applicant solely on the ground that he is not resident of native of Kerala State.
- b) *Harjeet Chandok @ Harjeet Singh Chandok and others Vs. The State of Karnataka* (Criminal Petition No.522 of 2019) dated 3rd May, 2029 (Karnataka High Court), wherein it has been held that merely because petitioners are residents of some other State itself is not a ground to reject the bail application.

6 The learned APP for the State strongly opposed the applications and submitted that the applicants are residents of Madhya Pradesh and they have criminal antecedents. If the applicants are released on bail, the possibility of committing same nature of crime cannot be ruled out. Their presence cannot be easily secured for the trial. At the most the trial can be expedited. It is lastly prayed to reject the application.

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

I) 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.”

8 Perused the charge-sheet, particularly, the report and the statements of witnesses. In the test identification parade applicant /

Ankush Chavan is identified. Both the applicants are residents of Madhya Pradesh and their presence cannot be secured easily. The learned advocates for applicants submitted the authorities cited (supra), in which it is held that bail cannot be denied solely on the ground that the applicants are residing in another State.

9 The applicants have criminal antecedents. A Crime No.307 of 2023, registered with Muktai Nagar Police Station, District Jalgaon, for the offences punishable under Sections 399 and 402 of the IPC, under Section Section 3/25 and 4/25 of the Arms Act and under Section 135 of the Maharashtra Police Act, is registered against them.

10 The learned advocates for applicants submitted that the alleged incident took place at Jamner Taluka and Muktai Nagar Taluka of district Jalgaon, which is adjacent to Burhanpur district.

11 Considering the antecedents of these applicants, not only on the ground that the applicants are residing in Madhya Pradesh, this Court is not inclined to grant bail to these applicants. Further, as per the norms / guidelines and directions of the Honourable Supreme Court in the above case laws, the possibility of commission of same nature of crime on the part of the applicants cannot be ruled out.

12 Considering the fact that these applicants are booked for serious crime of dacoity, both these applications deserve to be rejected. For the reasons stated above, the case law cited (supra) on behalf of the applicants are not relied upon.

13 Both these bail applications are rejected.

[SANJAY A. DESHMUKH, J.]

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