

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 572 OF 2024

Aniket @ Zingya Sunil Shejwal

VERSUS

The State Of Maharashtra

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Advocate for Applicant : Ms. Sonawane Sunita G.

APP for Respondent/State : Mr. S.M. Ghanachari

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CORAM : S.G. MEHARE, J.

DATED : JUNE 19, 2024

PER COURT:-

1. Heard learned counsel for the applicant and learned APP for the State.
2. The applicant seeks bail in Crime No.162 of 2023 registered with Shirdi Police Station, District Ahmednagar, for the offence punishable under Sections 143, 147, 148, 149, 307, 324, 323, 504, 506 of the Indian Penal Code.
3. Learned counsel for the applicant has vehemently argued that the allegations against the applicant have been exaggerated. No incident as such happened. The injury certificate does not match the assault. The injury was not caused by a knife, but was caused by a hard and blunt object. She would submit that it was a political rivalry. Hence, he has been falsely implicated in the crime. There are a large number of independent eyewitnesses, but they were not examined, though the incident happened in daylight. The so-called witnesses are

friends of the injured. Their statements are stereotypes. The mere pendency of several criminal cases against the accused cannot be a basis to refuse the bail. She also argued that the applicant was a young boy. The investigation has been completed. Nothing is to be recovered from him. Hence, he may be granted bail. To bolster her arguments, she relied on the case of Mumtaz Vs. State (NCT of Delhi) and Another, MANU/DE/5424/2022, Mohammad Ubaid Vs. State of U.P. decided on 02.08.2023 in Criminal Misc. Application No.30337 of 2023 and Prabhakar Tewari Vs. State of U.P. and Another in Criminal Appeal No.152 of 2010 (Arising out of Special Leave Petition (Crl.) No.9207/2019) decided on 24.01.2020.

4. Per contra, learned APP has argued that there were six eyewitnesses to the incident. The applicant was involved in similar crime. He was also externed from the area. After the externment period was over, he committed a serious offence. In an offence under Section 307 of the Indian Penal Code, the overt acts are more material than the injury suffered. He would submit that a deadly weapon has been recovered at the instance of the applicant. The incident happened on the road when the injured and his friends were going to attend the procession. The applicant was carrying a deadly weapon. That goes to show his criminal intent. The ratio laid down in the cases relied upon by the applicant based on peculiar facts. It is not a thumb rule that, in every case, bail should be granted to the accused against

whom many crimes are registered. He expressed an apprehension that on releasing this applicant, he may create a nuisance and commit the crime. He prayed to dismiss the application.

5. The FIR is very specific that the applicant and his friends, came across the first informant, and they started assaulting him with fist and blows. The applicant suddenly took a knife from the waist, pulled the injured catching of his T-shirt and immediately assaulted his neck, but he dodged it. Again, the applicant assaulted him, it was again dodged, but he caused the injury on the eyebrow of the right eye that created the terror. The devotees of Saibaba started running from the spot. The nearby shopkeepers shut down their shops and went away. It is not disputed that the weapon allegedly used in the crime has been recovered at his instance. The medical report reveals that the injured has suffered an abrasion over the forehead perhaps caused by the hard and blunt object.

6. So far as the reliance on the case laws by the applicant is concerned, the view of the Hon'ble Supreme Court in the case of Prabhakar (cited supra) was referred to in two further cases relied upon by the applicant. Prabhakar had preferred an appeal against the refusal to cancel the bail. The Hon'ble Supreme Court refused/declined to interfere with the discretion exercised by the High Court granting bail. The Hon'ble Supreme Court has examined the material available and recorded the finding that the materials

available do not justify arriving at the conclusion that the order impugned suffers from non-application of mind or the reason for granting bail is not borne out from a prima facie view of the evidence on record. The offence alleged is undoubtedly grave and serious, and there are several criminal cases pending against the accused. These factors alone cannot be the basis for refusing the bail. The Hon'ble Supreme Court also observed on exercising the discretion by the Court. Specific observation has been recorded that the bail was granted upon considering relevant materials.

7. In the case of Mohammad Ubaid (cited supra), Prabhakar's case was referred. In Para 10, it has been observed that 'in so far as criminal antecedents of the applicant are concerned, it is not the case of the State that applicant may tamper with the witnesses or otherwise adversely influence the investigation, or that he might intimidate witnesses before or during the trial. The State has also not placed any material that the applicant in the past attempted to evade the process of law. If the accused is otherwise found to be entitled to bail, he cannot be denied bail only on the ground of criminal history. No exceptional circumstances on the basis of criminal antecedents have been shown to deny bail to the accused. It can be easily inferred from the observations of the High Court in Prabhakar's case that if the accused is otherwise found to be entitled to bail, he cannot

be denied bail only on the grounds of criminal history. That means that the applicant has to primarily established the case for bail.

8. The Hon'ble Supreme Court in the case of Prabhakar (cited supra) declined to interfere with the order granting bail of the High Court based upon the facts. So, it can be easily held that each case should be dealt with its facts and the nature of the offences. How the offence has been committed should be borne in mind. The learned Prosecutor has specifically submitted that after the externment order was over, the applicant immediately committed the crime. This means that preventive action was taken against the applicant, but he has disobeyed the law. As far as the non-recording of the statements of the shopkeepers is concerned, the FIR itself discloses that there was terror due to the acts of the applicant. Therefore, all the owners of the shop shut down their shops and went away. Not only this, but other devotees nearby Saibaba Sansthan also ran away. This fact shows the way in which the assault has been made. The applicant is involved in similar crime. He did not respect the law and order even after the externment order. He was again involved in similar crime. Therefore, it would not be safe to grant bail to the applicant. The possibility of repeating the crime at his hands cannot be ruled out. For the above reasons, the application stands dismissed.

(S.G. MEHARE, J.)