

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 1550 OF 2024

Gangadhar Masnaji Waghmare

VERSUS

The State Of Maharashtra

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Advocate for Applicant : Mr. Gangakhedkar Shailendra S.

APP for Respondent/State : Mr. S.B. Pulkundwar

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CORAM : S.G. MEHARE, J.

DATED : SEPTEMBER 25, 2024

PER COURT:-

1. Heard learned counsel for the applicant and learned APP for the State.
2. The applicant seeks bail in Crime No.454 of 2023 registered with Shivajinagar Police Station, District Nanded for the offences punishable under Sections 302, 143, 147, 149, 120-B, 504, 506 r/w 34 of the Indian Penal Code and Sections 4/25 of the Arms Act.
3. The applicant has a case that incomplete charge sheet has been filed and the so-called CCTV footage allegedly used against the applicant was not supplied. In view of the statement, this Court on 20.09.2024 granted time to the learned APP to take the instructions and provide the copy of transcript to the accused and his learned counsel in advance before the next date. Five days were granted to the prosecution.

4. The learned APP has called the investigation officer in person. He came with one sealed envelope and stated that one copy of the CCTV footage which is sent to the laboratory is sealed in the envelope. The learned APP was seeking an order from this Court for opening the sealed envelope containing a pen drive. It was the document in the custody of the investigation officer and not the part of the charge sheet. Seeking such an order is nothing but saddling the responsibility of the investigation officer, on the Court. No such orders could be passed. The investigation officer is still in the custody of that material. Those are his powers whether to provide the copy to the Court but he cannot take the shelter of the Court by getting the observations recorded that the said sealed envelope is opened in the Court. Thereafter, the learned APP Mr. Pulkundwar is seeking time again and again even the Court declined to grant him time, because five days were already granted. This is not the way to address the Court and protect the investigation officer. Till the order is passed, no attempts were made to state that the investigation officer is ready to take the pen drive from the sealed envelope to show that the applicant was the active member of the assault.

5. Learned counsel for the applicant would submit that the supplementary statement of the first informant raises a serious doubt because at one juncture he says that he was not there and in supplementary statement he stated that he left the Nagarjun Lodge

and then the incident happened. His supplementary statement is put into service by the learned APP and vehemently argued that the first informant stated that the applicant was the assailant. However, reading his supplementary statement, nowhere it reflects that he has specifically mentioned the role attributed to the applicant, except watching the CCTV footage. However, the names of the applicants/accused were learnt to him from the police. Another eyewitness which has been referred to by the learned APP was the another manager. He was also not knowing the assailant. The identification of the accused were not confirmed from him by showing him the CCTV footage.

6. Learned APP has pointed out that the applicants/accused were immediately arrested and the clothes wore by them at the time of the incident were recovered. It was the seizure panchnama under Section 165 of the Criminal Procedure Code. The learned APP vehemently argued that incriminating evidence has been recovered from the applicant.

7. The recovery panchnama is at page nos.99 and 100. The column about the place from where the properties recovered show the articles were seized in the Police Station Shivajinagar. The recovery panchnama is silent how the clothes were seized as the place of seizure is shown as Police Station Shivajinagar. So, it raises a serious doubt about the recovery of the clothes wore at the time of the

incident. Even this panchnama does not disclose that the clothes from the person of the accused were recovered and another clothes were provided to him.

8. Though the learned APP has strongly relied on the CCTV footage showing the active role attributed to the applicant, it is not made part of the record. No transcription was immediately provided. The so-called CCTV footage was just recovered and sent to the chemical analysis. So at this juncture, it is difficult to believe that the applicant has played an active role. In this case, the deadly weapons were not used. There are no antecedents to the discredit of the applicant. The charge sheet is filed. Nothing is to be recovered from the applicant. The trial may take its time. Hence, the applicant deserves bail. Hence, the following order :

ORDER

- (i) Bail Application is allowed.
- (ii) Applicant, Gangadhar Masnaji Waghmare, be released on bail on furnishing P.B. and S.B. of Rs.50,000/- (Rupees Fifty Thousand only) with one solvent surety of the like amount in the above crime, on the conditions that he should not tamper with the prosecution witnesses and should attend the trial on each and every effective date of hearing.

(S.G. MEHARE, J.)