



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

937 BAIL APPLICATION NO. 1705 OF 2023

Santosh Vijay Survase.

... Applicant

Versus

The State of Maharashtra.

... Respondent

...

Mr. Joslyn A. Menezes, Advocate for Applicant.

Mrs. Pratibha J. Bharad, APP for Respondent/State.

Mr. M. S. Bhosale, Advocate to assist the PP.

...

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

DATE : 15th February, 2024.

P.C.:

1 Heard.

2 This is an application, under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail in connection with Crime No.9 of 2023, registered with Ashti Police Station, District Beed, for the offences punishable under Sections 302, 307, 326, 324, 323, 504, 506, 120-B, 109, 143, 147, 148 and 149 of the Indian Penal Code and under Sections 37(1) and 37(3) of Maharashtra Police Act.

3 It is averred in the report that informant Nana Baban Survase and his brother Tatya went to Ashti Police Station for lodging

the report on 6th January, 2023, as their sibling Amol was beaten by co-accused Saurabh. That time, this applicant (accused No.1) convinced them not to lodge the report and the matter can be resolved by compromise at his home. Accordingly, the informant, Ganesh Parshu Survase, Sunita Anil Murkute, Savita Tatya Survase, Amol Anil Murkute, Rahul Anil Murkute and the brother of informant Tatya, went to the house of this applicant at about 08:15 pm on the same day, where all the accused persons were present. That time, co-accused Akshay closed the gate of the compound of the house from inside and all the accused took iron rods, sword and bludgeons and alleged that the informant and his relatives voted against them in the elections and also went to lodge the report against them. Therefore, they started to assault the informant and other witnesses. This applicant and co-accused Saurabh assaulted the brother of informant Tatya with iron rods on his head due to which Tatya collapsed on the ground. Co-accused Akshay assaulted the informant with sword on his head, but it was landed on the shoulder of informant. Therefore, the informant collapsed down. The remaining accused also assaulted injured witnesses by iron rods and sword. The informant and his brother Tatya were moved to the hospital. His report was taken down in the hospital and accordingly, the crime was registered.

CCTV footage it appears that the applicant is just walking there and did not assault. Due to earlier dispute, the applicant is falsely implicated in the crime. The incident occurred without any plan and intention to commit murder of the deceased. This Court granted bail to co-accused Ranjit Gunjal considering that the provisions of Section 302 of the IPC are not attracted. This applicant did not use any weapon. The applicant has no criminal antecedents. It is lastly prayed to allow the application.

5 The learned APP for the State and the learned counsel assisting the prosecution strongly opposed the application and submitted that the applicant is involved in the crime of murder. His name is mentioned in the report. The report of Forensic Science Laboratory in respect of CCTV footage is still awaiting. The possibility of same nature of crime cannot be ruled out. Considering the possibility of pressurizing the prosecution witnesses and tampering the evidence, it is lastly prayed to reject the application.

6 Perused the charge-sheet, particularly, the FIR and the postmortem report. The name of the applicant is mentioned in the charge-sheet. The incriminating weapons are seized. The role of the applicant was to call the informant and the deceased for compromise in his house and there at his instance, they all went for compromise.

In the CCTV footage accused No.7 (Ranjit Gunjal) was not seen, therefore, this Court granted him bail. Merely because the applicant did not assault at the time of alleged incident, it cannot be inferred that he was not involved in the said crime. There is oral evidence of the informant and other witnesses that the applicant assaulted. The entire incident is not covered in the CCTV footage. The applicant has not made out a case for granting him bail on the principle of bail is a rule and jail is an exception. All the grounds raised in the written arguments of the learned counsel for applicant are the matter of evidence.

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

- i) ***Deepak Yadav Vs. State of Uttar Pradesh and another, (2022) 8 Supreme Court Cases 559;*** and
- ii) ***Shahzad Hasan Khan Vs. Ishtiaq Hasan Khan and another, (1987) 2 Supreme Court Cases 684.***

8 In ***Deepak Yadav*** (supra), 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.”

9 In *Shahzad Hasan Khan* (supra), 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.”

10 In view of the above ratio and guidelines laid down in the above case laws, there is *prima-facie* material against this applicant. The applicant has called the informant for compromise at his house and thereafter, alleged incident occurred at his house. His name is mentioned in the report. He is booked for serious crime of murder. His possibility of fleeing away from the trial, pressurizing the prosecution witnesses and tampering with the evidence cannot be ruled out. Therefore, the applicant is not entitled for bail on the principle that jail is exception and bail is rule. He is not entitled for liberty of bail and it is not justifiable. Considering all these aspects, the application deserves to be rejected. The bail application is, therefore, rejected.

[SANJAY A. DESHMUKH, J.]

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