



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

904 BAIL APPLICATION NO. 2089 OF 2023

GANESH ALIAS BHATEYA SUBHASH JAGTAP (PATIL)

VERSUS

THE STATE OF MAHARASHTRA

Advocate for Applicant: Mr. Rajendra Deshmukh, Senior Advocate i/b
Mr. Devang R. Deshmukh, Ms. Rakshanda Jaiswal and Mr. Vishal Chavan
APP for Respondent/State : Mrs. Pratibha J. Bharad
Advocate for assist to P.P. : Ms. Nilofar G. Khan h/f Mr. V.P. Raje

**CORAM : SANJAY A. DESHMUKH, J.
DATED : 23rd FEBRUARY, 2024.**

PER COURT :-

1. The applicant is seeking bail under section 439 of the Criminal Procedure Code, 1973 (for short, "Cr.P.C."). The applicant has been arrested in connection with crime No.0040 of 2023 registered with Shirpur City Police Station, Shirpur, Tq. Shirpur, Dist.Dhule, for the offences punishable under sections 302, 143, 147, 148, 149, 120-B and 201 of the Indian Penal Code.

2. Informant averred in the report that before 2 years quarrel took place between his son Rahul and this applicant Bhatya @ Ganesh Subhash Patil. When the applicant went to convince this applicant, he and his brother beaten him, therefore, there was enmity between them.

3. It is further averred in the report that on 04.02.2023 at about 6 p.m., one Nitin Bhoi came to him on his shop and told that

the applicant has assaulted his son Raul. He immediately went to Indira Hospital. He saw that there was severe injury to a stomach of Rahul. That time doctors directed him to took him to Cottage hospital. There doctor declared that he is no more. Informant got information about that incident from Nitin Bhoi and he told him that near to Krantinagar at R.C. Patel School, he saw Rahul having bleeding injuries and the applicant and other co-accused were having sword, knife and other weapons in their hands. Therefore, the report was lodged against the applicant and others.

4. The learned advocate for the applicant submitted that the report is filed on hear-say information given by Nitin Bhoi. The applicant is falsely implicated in the crime. There is unreasonable delay caused for recording statements of the witnesses. The co-accused are released on bail by this Court. The applicant has roots in the society. He has no criminal antecedent. Considering the rule of parity, he lastly prayed to allow the application.

5. The learned APP for the State strongly opposed the application and submitted that the applicant is booked for serious crime of murder of son of informant. Criminal antecedents of the applicant are pointed out namely Crime No.184/2014 under sections 326, 323, 504, 506 of the Indian Penal Code, Crime No.282/2018 under section 395 of the Indian Penal Code and under section 3(1)(r)(s) of the Scheduled Castes and Scheduled Tribes (Prevention

of Atrocities) Act, Crime No.107/2019 under sections 324, 34 of the Indian Penal Code and Crime No.223/2019 under sections 324, 323 of the Indian Penal Code. The learned advocate assisting to prosecution also strongly opposed the application and submitted that the applicant is prime accused and he is wirepuller of this incident. Therefore, rule of parity cannot be made applicable to this applicant. There is evidence of witnesses, who have seen the incident of assault. If the applicant is released on bail, he will certainly pressurize the prosecution witnesses and considering his criminal antecedents, he cannot be released on bail. It is lastly submitted to reject the application.

6. Perused the charge-sheet, particularly the report and statements of witnesses. No doubt, the statements of the witnesses are not promptly recorded after the incident, but only on that count and for the inaction or mistake of the Investigating Officer, the entire incident of assault and commission of murder cannot be disbelieved at this stage. Meticulous consideration of the evidence is not expected at this stage. The postmortem report shows that Rahul sustained 8 injuries. A stab injury is sustained to him on his stomach. Admittedly, knife used for commission of murder of Rahul is seized which was lying on the spot of incident and clothes having blood stain were seized at the instance of this applicant. The witnesses Sachin Bhoi and Nitin Bhoi witnessed that incident and their statements are on record. In the initial part of the FIR, the name of this applicant is

stated by Nitin Bhoi that Bhatya assaulted Rahul. Though other co-accused are released on bail by order of this Court in Bail Application No.1512 of 2023, dated 27.09.2023, their role is different than this applicant. Further, their names are subsequently added with general allegations and without specific role. Role of this applicant is very specific that he assaulted Rahul with knife on his stomach. Possibility of pressurizing the prosecution witnesses and tampering the evidence on his part cannot be ruled out. Further, he is booked for serious crime of murder for death penalty and life imprisonment is prescribed for it. At the same time, victims near and dear shall not feel that there is no justice.

7. In the case of ***Deepak Yadav Vs. State of Uttar Pradesh and another, (2022) 8 SCC 559***, the Hon'ble supreme Court in para 22 has laid down eight guidelines. Para 22 reads 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.*

8. In the case of ***Shahzad Hasan Khan Vs. Ishtiaq Hasan Khan and another, (1987) 2 SCC 684***, para 6

"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."

9. Considering the ratio and guidelines in the above case laws and the entire material on record, the applicant is certainly not entitled for bail. The application, therefore, deserves to be rejected. It is rejected.

(SANJAY A. DESHMUKH, J.)

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