



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

32 BAIL APPLICATION NO. 2273 OF 2023

Avinash Shamlal Gupta
VERSUS
The State of Maharashtra

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Advocate for Applicant : Mr. N.R. Shaikh h/f Mr. Faisal N. Shaikh
APP for Respondents: Mr. Satish A. Gaikwad

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CORAM : SANJAY A. DESHMUKH, J.
DATED : 29th JANUARY, 2024.

PER COURT :-

1. This is an application for granting bail under Section 439 of the Code of Criminal Procedure, 1973. The applicant and other accused persons are arrested in connection with Crime No. 24 of 2023 registered with Faijpur police station, district Jalgaon for the offences punishable under Sections 302, 307, 341, 323, 337, 504, 506, 143, 147, 148, 149 of I.P.C.

2. The informant averred in the report that he and his friend Shubham were proceeding on a scooty, which was driven by deceased - Shubham. Co-accused Santosh Gupta, the applicant and one Bhola stopped the vehicle of deceased. At that time, one of them pelted stones on the informant. Shubham had also sustained injuries by stone to his back. At that time, they were followed by the applicant and others by two motor cycles. The present applicant Avinash stopped their vehicles and started assaulting on Shubham

on the ground of earlier quarrel. Other accused persons also assaulted Shubham, with knife. Shubham was taken to the hospital. The report was registered in the police station, Faijpur, Tq. Yawal, district Jalgaon. The applicant was arrested on 22.02.2023.

3. During the course of arguments, learned advocate for the applicant pointed out the orders passed by this court in bail application Nos. 1474 of 2023 and 1983 of 2023 and submitted that the applicant is alleged to have played similar role like other co-accused, who have been released on bail. He further submitted that the evidence of witnesses is materially contradicting each other. The informant's evidence is prima facie reasonably doubtful, as he has excluded one of the alleged assailant-co-accused in his supplementary statement recorded under Section 164 of Cr.P.C. Shubham was died after 26 days of the alleged assault and he did not make any allegation against any of the accused, including this applicant. The applicant is behind bars for more than 11 months. Learned advocate for the applicant therefore, prayed to allow this bail application on the ground of principle of parity.

4. Learned A.P.P. for the State strongly opposed the application and pointed out that there is consistency in the statements of all witnesses and informant that the applicant Avinash assaulted Shubham by knife. Learned A.P.P. pointed out the cause of death by which Shubham was died. Learned A.P.P. further pointed

out the observations of this Court made while deciding the bail application No. 1983 of 2023 filed by co-accused Raj @ Bhola Ramchanran Gupta, in which it is observed that none of the eye witnesses attribute assault by any other person except accused Avinash Gupta. He therefore, submitted that the applicant is not entitled for bail on the ground of parity.

5. Perused the charge sheet. Name of the applicant is mentioned in the report with a specific role that he assaulted Shubham with the help of knife. Thus, his role is specifically pointed out not only in the report but in the statements of the witnesses also. He is prime accused. Considering his role pointed out by the learned A.P.P. for the State and the observations of this Court in the order dated 5.12.2023, passed in bail application No. 1983 of 2023, the applicant is certainly not entitled for bail. He is involved in the serious crime. The possibility of pressurizing the prosecution witnesses and tampering with the evidence cannot be ruled out. Considering all these aspects, the application deserves to be rejected. The application is accordingly rejected.

6. It is made clear that the observations made in this order are prima facie in nature and the trial court shall not get influenced by the same while deciding the trial.

(SANJAY A. DESHMUKH, J.)