



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

907 BAIL APPLICATION NO. 2322 OF 2023

1. Manoj s/o Nanasaheb Bhalekar
2. Mukund s/o Nanasaheb Bhalekar
3. Vikas s/o Digambar Ghodke
4. Rameshwar s/o Tukaram Gaware ...Applicants

versus

The State of Maharashtra ...Respondent

...
Advocate for Applicant : Mr. S. G. Ladda, Mr. Akshay P. Lohade, Ms.
Siddhi A. Kothari

APP for Respondent: Mr. Satish A. Gaikwad

Advocate to assist the A.P.P. : Mr. Sambhaji S. Tope

.....

CORAM : SANJAY A. DESHMUKH, J.
DATED : 13th FEBRUARY, 2024.

PER COURT :-

1. Heard both sides.
2. After hearing learned advocates for the respective parties, when this court expressed disinclination to allow the application, learned advocate for the applicant, on instructions, seeks leave to withdraw the application of applicant No.4. Leave granted. The application of applicant No.4 is disposed of as withdrawn.
3. The applicant Nos. 1 to 3 are seeking bail under section 439 of the Cr.P.C. in connection with crime No. 0269 of 2023 registered with Chikalthana police station, Aurangabad District Aurangabad, for the offences punishable under Sections 143, 147,

148, 149, 302, 307, 324, 323, 504 and 427 of the Indian Penal Code. The applicants' application below Exh.03 in Sessions Case No. 620 of 2023 with similar prayer came to be rejected by the learned Additional Sessions Judge, (Court No.7) Aurangabad, vide order dated 04.12.2023.

4. It is averred in the report that on 5.7.2023, the informant alongwith Santosh Haribhau Hiwale, Ramchandra Narayan Hiwale, Vaibhav Ratnakar Hiwale, Bhaskar Kaduba Uddange, Sagar Ashok Gaike and Datta Khairi went to celebrate his birthday in a Scorpio jeep of Santosh Hiwale. They celebrated the birthday and when they were coming back in the said Scorpio jeep, by Beed to Aurangabad road and when they reached near Nipani corner, at about 10.15 p.m. suddenly one Maruti S-Cross car came in front of their jeep. Sagar Gaike who was driving that Scorpio jeep, applied a brake suddenly. Upon questioning with the driver of said S-Cross car by the driver of Scorpio, a quarrel took place between them. Thereafter, the informant and others started their journey by that Scorpio jeep. When they reached near to Hotel Choudhary, at Nipani, one person sitting in S-Cross car broke the back side's glass of the Scorpio jeep. Therefore, they all stopped that car in front of that Hotel. Sagar Gaike went to inquire about the same to the driver of said S-Cross car. Applicant No.1 Manoj and other applicants alongwith one unknown person alighted from the car. They said "जास्त माजले काय".

Thereafter, they started to abuse them. Co-accused Rameshwar with the help of knife made assault on Sagar Gaike and Ramchandra Hiwale. They sustained injuries to the rib and near to ear. The other accused persons i.e. applicant No.1 Manoj, applicant No.2 Mukund and applicant No.3 Vikas assaulted on Santosh Hiwale and Bhaskar Uddange by iron rod with an intention to kill them. They sustained injuries to their back and hands. One unknown person assaulted the informant-Ratnakar Hiwale, Datta Khaire and Vaibhav Hiwale by fist and kick blows. Sagar Ashok Gaike and Ramchandra Narayan Hiwale were admitted in United CIIGMA Hospital, Aurangabad. A report was lodged. Thereafter, Ramchandra Hiwale succumbed to injuries on 07.07.2023. Subsequently, Section 302 of the I.P.C. was invoked against the applicants and co-accused.

5. Mr. S.G. Ladda, learned advocate for the applicants submitted that the applicants are falsely implicated in the crime. They have roots in the society. They will not flee away from the trial. There is unexplained delay in lodging the report. Applicant No.1 Manoj was not there at the time of alleged incident. He was in the Government Medical College and Hospital, Aurangabad at the relevant time at about 10.22 to 11.15 p.m. alongwith one Navnath Bhalekar. He went there in his Hyundai Verna car bearing No. MH-20-CS-9617 to meet his friend Altaf Kayyum Shaikh, R/o. Zalta, who was admitted in the said hospital. The affidavits of Navnath Bhalekar and Altaf Kayyum Shaikh are filed on record in which they have stated that applicant

No.1 Manoj came there to meet Altaf by car No. MH-20-CS-9617.

6. Learned advocate for the applicants further pointed out that a snapshot shows that applicant No.1 was present there at about 10.44 p.m. onwards. The CCTV footage is produced, which was openly displayed and watched in the court room, in presence of advocates of both sides.

7. Learned advocate for the applicants further pointed out the statements of witnesses and submitted that the applicants are falsely implicated in the crime. The applicants were not familiar with the informant and the injured persons. It is lastly prayed to allow the application.

8. Learned A.P.P. for the respondent State assisted by Mr. S.S. Tope, learned advocate, has strongly opposed the application and contended that the alleged CCTV footage is not seized by the investigating officer and it was not produced on behalf of the applicants before him. Applicant No.1 Manoj is not appearing in the said CCTV footage. Learned A.P.P. for the State further submitted that the applicants have criminal antecedents and they are arrested in many cases. He pointed out four crimes registered against the applicants bearing Nos.110 of 2022 registered with Chikalthana police station, 262 of 2018 registered with Karmad police station, 51 of 2020 registered with Chikalthana police station and 06 of 2020

registered with Jawaharnagr police station. Learned A.P.P. further submitted that considering serious nature of the crime and possibility on the part of the applicants in pressurizing the prosecution witnesses and tampering the evidence cannot be ruled out. It is lastly prayed to reject the application.

9. Perused the report and the charge sheet. The names of the applicants are mentioned in the report and eye witnesses have specified their role in the incident. The statements of witnesses are in consonance with the contents in the F.I.R. The applicants were armed with weapons like iron rod etc. It means they were already armed with the weapon. There is strong prima facie material against them. They are booked for serious crime i.e. commission of murder of Sachin and also attempt to commit murder of the witnesses.

10. As far as the CCTV footage is concerned, the learned A.P.P. for the State pointed out that in the bail application filed by these applicants in Sessions Case No. 620 of 2023, the trial court has observed that the distance of Government Medical College and Hospital are not far away from the spot of incident. The CCTV footage is also not clear to identify applicant No.1 Manoj specifically therein.

11. No doubt, applicant No.2 Mukund sustained injury and no such injury certificate is placed on record but he had not made any

complaint when he was produced before the learned J.M.F.C. that in what manner he sustained injuries. It means he was present there at the time of incident of assault.

12. It is an admitted fact that this court, in respect of crime No. 110 of 2022, registered against applicant No.3 Vikas rejected his anticipatory bail application No. 1171 of 2022 and also cancelled the bail granted to applicant No.1 Manoj @ Satish Nanasaheb Bhalekar, in application for cancellation of bail No. 92 of 2022, by common order dated 08.08.2023. The similar defence was taken by the applicant Manoj in earlier case that he was not there at the time of incident by showing CCTV footage.

13. 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 is reproduced 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.*

14. 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.”

15. Considering the ratio and guidelines in the above case laws and the entire material against the applicants, *prima facie*, this court found that there is material against the applicants. They are involved in the serious crime. They have criminal antecedents. There is possibility of committing of same nature of crime, if they are released on bail. Their possibility of pressurizing the prosecution witnesses cannot be ruled out. They have misused their liberty of bail which was granted to them in earlier crimes. Therefore, they are not entitled for bail on the principle that bail is rule and jail is exception. Their presence cannot easily be secured for trial.

16. For the reasons discussed above, the arguments of learned advocate Mr. Ladda are not accepted. The application, therefore, deserves to be rejected. It is accordingly, rejected.

(SANJAY A. DESHMUKH, J.)

rlj/