IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

948 BAIL APPLICATION NO. 1731 OF 2024

SAGAR AMARNATH DEVKAR
VERSUS
THE STATE OF MAHARASHTRA

WITH

CRIMINAL APPLICATION NO.4321 OF 2024 IN BA/1731/2024

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Advocate for Applicant : Mr. Ghanekar Nilesh S.
APP for Respondent-State : Mr. V. S. Choudhari.
Advocate for Informant to assist APP : Mr. Mohit Khanna and Mr. Pranav Phadnis.
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CORAM : S. G. MEHARE, J.
DATE : 15.10.2024

PER COURT :-

1. Heard the learned counsel for the applicant, the learned APP for the respondent-State and the learned counsel for the informant.

2. The applicant seeks bail in Crime No.62 of 2022, registered with Waluj Police Station, District Aurangabad, for the offences punishable under Sections 395, 364, 354, 324, 323, 504, 506 of the IPC and Section 3/25 of the Arms Act.

3. Before adverting to the allegations against the applicant, it would be appropriate to discuss the relations and disputes of

their families. They have a long history of matrimonial litigation between the complainant and the sister of the applicant. Both had filed many non-cognizable offences against each other including the applicant. The complainant had also filed a report of serious allegations of robbery before this incident. However, the police did not take cognizance. Hence, he had filed an application under Section 156(3) of the Cr.P.C. The learned Magistrate refused his prayer. However, his application was converted into the complaint. Subsequently, he withdrew it. It is also the matter of record that their matrimonial dispute is hotly contested. None of the sides left a single stone unturned. Most of the time, both parties are filing petition after petition. Even in this case, the injured has filed writ petition alleging against the Investigating Officer that he is making the snail speed investigation. Admittedly, the applicant was not arrested for two years from the date of the incident. It is also not disputed that on the day of the alleged incident, the injured had been to Aurangabad to attend the matrimonial dispute. This alleged incident was the outcome of the most serious litigation of matrimonial dispute.

4. The FIR reveals that the incident occurred on 07.03.2022 at about 21.00 hours at Hotel Sai Yashwanti Hotel,

Aurangabad-Ahmednagar Highway road. It has been alleged that on that day, the injured was in the said hotel with his sister in the evening. That time, the applicant went there with five persons. They started abusing and beating him by fists and blows. He was assaulted with a wooden log on his head which caused him injury. When his sister came to intervene, she was threatened with the iron rod and beaten with fists and blows. Thereafter, the applicant snatched the mobile handset of 1+ Nord company and Rs.15,000/- from his pocket and then they dragged him and pushed him into the Etios car and took him away. He was taken to different places. However, he jumped from that car in one place. Thereafter, his sister came there with the police. He was taken to the hospital. On the next day, he gave his statement of the incident. The applicant has suffered the injuries. On the basis of the allegations, the crime was registered. The hotel owner and waiters were examined. They have stated that the incident happened.

5. The applicant is arrested before four months. His anticipatory bail applications were rejected. The learned Sessions Court has rejected his bail application twice. He is coming to this Court for the first time.

6. Learned counsel for the applicant Mr. Ghanekar has vehemently argued that the allegations of committing robbery and assault with the pistol hilt are exaggerated only to make the offence serious. Otherwise, the remaining Sections are bailable. The eyewitnesses do not support the allegations of snatching Rs.15,000/- and his SIM cards, his mobile handset which was recovered from a third person who find it near the hotel. There is absolutely no recovery of anything allegedly robbed. The witnesses do not state that the applicant was there. When the police reached the spot where he jumped from the car neither the complainant nor his sister disclosed the name of the applicant. However, to involve the applicant and his family, false allegations have been levelled against him that he was the main accused of the crime. The injuries suffered by the injured were simple. The investigation is silent about the role attributed to the applicant. The FIR was delayed by twenty hours. The co-accused has been granted bail. They played identical roles. Hence, he deserves parity. The allegations are out of the matrimonial dispute. The complainant has tried to indulge the family of his wife in such a crime even before this incident. However, he could not prove that any such offence had occurred. He is repeatedly making the same allegations in each report though the offence of robbery was not committed.

The sister of the applicant lodged the report under Section 498-A long back in 2022. Various maintenance orders were passed against him but he did not obey. He even did not obey the order of this Court. The overall conduct of the injured was that he was searching the reasons to implicate the family of the applicant in such a serious crime. He is habitual in taking every order to the higher court. The CCTV footage of the petrol pump does not show the presence of the applicant with other co-accused. In fact, he was not on the spot. Nothing is to be recovered from him. The trial may take its time. Hence, he may be granted bail.

7. Learned counsel for the victim has vehemently opposed the application and submitted that the applicant has a bad history. The crimes under IPC as well as Section 138 of the N.I.Act are pending against him. He was involved in sand stealing. He has a great support of the local leaders. Referring to the CCTV footage of the Police Station he pointed out that immediately after his arrest the local MLA and other persons had been to the Police Station. That shows his influence. In one of the pictures, one police personnel was sitting behind the co-accused who has been granted bail. If such is a treatment given to the accused, he has no option except to knock on the

doors of the Court of law. He also referred to the pictures of the injured to point out how the injuries were grievous and how the incident was serious. The injured has no reason to implicate the accused falsely. Due to the acts of the applicant, the liberty of a common man is in danger. He has to come regularly to Aurangabad to attend the matrimonial dispute. Therefore, he has a serious apprehension and danger to his life. The documents placed on record support his contention that the applicant and his family are influentially supported by political background and they are financially strong. He also argued that when he was present in the Aurangabad town, he was shown absconding. He placed on the record to show that he was never out of Aurangabad. However, he was not arrested. This reveals that the police machinery was in his pocket. He has also referred to the papers of matrimonial dispute which are not seriously disputed. He has also tried to refer to the orders of the Sessions Court refusing bail. However, those are not binding upon this Court. This Court has to examine the facts independently. Lastly, he relied on the judgment of ***Ash Mohammad Vs. Shiv Raj Singh @ Lalla Babu and another ; (2012) 9 Supreme Court Cases 446***. He read the paragraphs Nos.7 and 17 and argued that if such an influential person is granted bail the liberty of civilized man cannot be

guaranteed. Therefore, the applicant cannot claim that he has a right to seek liberty by granting bail. The safety of a common man is more important than granting bail to such influential accused. He prayed to reject the bail application.

8. Learned counsel Mr Ghanekar replied that only one IPC case under Section 289 is filed against him which is for dog biting. There are no cases registered against him for allegations that he is a sand mafia. Matters under Section 138 are arising out of the commercial transaction that does not show that the applicant is a habitual offender. The arrival of the politicians at the Police Station after his arrest may be a co-incident. Politicians have number of reasons to visit the Police Station. Therefore, from their pictures, it cannot be said that the politicians and other persons with him came to support him and that cannot be material to believe that the applicant is an influential person and he may abscond from the trial. He also referred to the same judgment relied upon by the learned counsel for the victim and argued that in that case, the High Court did not consider the large number of crimes registered against the said applicant. In that context, the Court recorded the principles of safety and liberty of the civilized man. Since

he was facing identical crimes and history-sheeter, the Hon'ble Supreme Court rejected his bail application.

9. Perusal of the record *prima facie* shows that the incident happened on the day when the injured appeared for the matrimonial dispute at Aurangabad. The Police Constable was guarding him. After the Court hours, he left the police guard to head office and then went to the hotel where his sister was waiting. Considering the entire facts and circumstances the presence of the applicant there cannot be denied The accused were aggressive. They assaulted him and took him from that place in the car forcefully. He jumped from the car and could save his life. Considering the aggression of the applicant and his associates, it could not be said at this juncture that they had no intention to kill the applicant. The applicant was instrumental in committing such a serious crime. The discrepancy as regards snatching/extracting the money and his SIM card with the statement of the waiter and hotel owner may be tested on merit. It is clear that considering the history of litigation and the way of contesting the matrimonial disputes both parties were seen as aggressive. Be that as it may, the person coming to the Court of law should feel safe and fearless. His safety has a direct connection with the

litigant's trust and confidence in the Court. The police did not arrest the applicant for two years. This goes to show that the applicant influences the police. So, considering his conduct, it cannot be disbelieved at this juncture that the politicians did not support him. Considering the post incident conduct of the applicant, there is a reasonable apprehension of his absconding, threatening or causing injury to the injured in future when he will be in Aurangabad to attend the matrimonial cases.

10. For the above reasons, the bail application stands dismissed.

11. Criminal Application to assist APP stands disposed of.

(S. G. MEHARE, J.)

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