

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.3886 OF 2023

Abhishek Manoj Hawaldar

...Applicant

Versus

The State of Maharashtra

...Respondent

Ms. Misbaah Solkar a/w Mr. Gaurav Shenoy, for the Applicant.

Ms. Rajeshree V. Newton, APP, for the Respondent – State.

P.S.I. S. R. Gunavare, Rajarampuri Police Station, District – Kolhapur, present.

CORAM: MADHAV J. JAMDAR, J.

DATED: 26 AUGUST 2024

P.C.:

1. Heard Ms. Solkar, learned Counsel for the Applicant and Ms. Newton, learned APP for the Respondent – State.

2. This regular Bail Application is preferred under Section 439 of the *Code of Criminal Procedure, 1973*. The relevant details are as follows:-

1	C.R. No.	348 of 2023
2	Date of registration of F.I.R.	05/07/2023
3	Name of Police Station	Rajarampuri, District – Kolhapur
4	Section/s invoked	307, 323, 427, 504, 506 & 34 of the <i>I.P.C., 1860</i> ; 5 & 27 of the <i>Arms Act, 1959</i> .
5	Date of incident	04/07/2023
6	Date of arrest	05/07/2023
7	Date of filing Charge-sheet	30/08/2023

3. By Order dated 6th November 2023 passed by the learned Additional Sessions Judge, Kolhapur below Exh.3 in Sessions Case No.216 of 2023, the Bail Application filed by the Applicant is dismissed. The prosecution case in brief is set out in Paragraph No.2 of the said Order, which reads as under:-

“2] Prosecution story in bried is as under :-

*The crime is registered on the basis of complaint of Nilesh Rajendra Jadhav resident of 14th lane, Rajarampuri, Kolhapur recorded by police officer in CPR Hospital on 05-07-2023, when he was admitted there for treatment. As per his complaint, he resides on given address with his family members and doing frozen business. On 04-07-2023 at 10.00 p.m. he was near Vijay bakery at Doulatnagar, Kolhapur. From Bhagatsing lane four persons came there on two motorcycles by hitting the sword on the rickshaw vehicles and motorcycles and they came near the informant. **On one motorcycle Ramu Kalgutaki was on back seat having sword in his hand, made assault of the sword on the informant's head by saying that now they will not leave alive him. Other persons Abhijeet Hawaldar, Karan Sawant and Vinayak Jadhav started to beat informant by fist and kick blows.** The informant shouted due to assault and all these four persons left place on the motorcycle towards Khare Mangal Karyalay. That time Uday Ghongade and Nitin More took the informant to CPR Hospital and he took treatment. Then he came to know from others that assailants had damaged two rickshaw vehicles and four motorcycles. On the basis of the same, aforesaid crime came to be registered against the accused persons. During investigation, the accused persons were arrested on 05-07-2023. The investigating officer recovered the sword from the accused Ramu Kalgutaki on basis of his discloser statement. The clothes of the accused were seized. Panchanama of the spot was prepared. After completion of investigation, the chargesheet came to be filed against the accused persons for aforesaid offences. The case is then committed to this Court*

for trial.”

(Emphasis added)

4. It is the contention of Ms. Solkar, learned Counsel for the Applicant that the only role attributed to the Applicant is that the Applicant had assaulted the Injured i.e. Informant by kicks and fist blows. She pointed out the Injury Certificate which is at Page No.82 and submitted that there is only one injury reflected in the Injury Certificate and the same is attributed to the Accused No.1 – Ram Mukund Kalgutaki. She submitted that although the Injured i.e. Informant has stated in the statement (Page No.33) on the basis of which F.I.R. has been lodged, that the Applicant assaulted him with kicks and fist blows, however, the other eye-witness namely Uday Shamrao Dhongade (Page No.70) has not attributed said role to the present Applicant. She submitted that the Applicant is incarcerated since 5th July 2023 and Charge-sheet was filed on 30th August 2023. She submitted that therefore the investigation is completed and till date there is no progress in the trial and even the Charge is also not framed. She therefore submitted that the Applicant is entitled for bail.

5. On the other hand, Ms. Newton, learned APP strongly opposed the Bail Application. She submitted that the Applicant had participated in the actual assault on the Injured i.e. Informant. She submitted that the Applicant has 5 criminal antecedents. The details of the same are as follows:-

Sr. No.	Police Station	Crime Reg. No. and Sections	Current status
1	Rajarampuri	428/2017, under Sections 324, 323, 504, 34 of I.P.C.	Pending before the Hon'ble Court.
2	Rajarampuri	343/2020, under Sections 143, 147, 149, 427, 323, 504, 506 of I.P.C.	Pending before the Hon'ble Court.
3	Rajarampuri	144/2021, under Sections 307, 326, 323, 353, 332, 427, 34 of I.P.C. r/w Section 3 of the Prevention of Damage to Public Property Act, 1984.	Pending before the Hon'ble Court.
4	Rajarampuri	202/2023, under Sections 324, 504, 506, 143, 147, 149 of I.P.C.	Pending before the Hon'ble Court.
5	Rajarampuri	348/2023, under Sections 307, 323, 504, 34 of I.P.C.	Pending before the Hon'ble Court.

6. Insofar as the above antecedents, it is the submission of Ms. Solkar, learned Counsel for the Applicant that as far as the offence mentioned at Serial No.1 i.e. C.R. No.428 of 2017 is concerned, at that time the Applicant was juvenile. As far as the other antecedents are concerned, she submitted that the offences which are mentioned at Serial Nos.2 and 4 are the bailable offences and the offence which is mentioned at Serial No.5 is the present offence. She submitted that the Applicant has been enlarged on bail in all the aforesaid offences and therefore the Bail Application be granted.

7. Perusal of the record shows that even as per the Charge-sheet the role attributed to the present Applicant is that the Applicant had assaulted the Injured i.e. Informant by kicks and fist blows. The injuries

reflected in the Injury Certificate are not attributed to the present Applicant.

8. It is an admitted position that investigation has been completed, the Applicant was arrested on 4th July 2023 and Charge-sheet was filed on 30th August 2023. However, till date, there is no progress in the trial and even the Charge is also not framed. As per the Charge-sheet, there are a total of 19 witnesses proposed to be examined by the prosecution. Accordingly, the trial will take a considerably long time to conclude.

9. Ms. Solkar, learned Counsel for the Applicant states that as most of the witnesses are from District – Kolhapur and all the five offences were registered at Rajarampuri Police Station, District – Kolhapur, the Applicant will therefore not reside within District – Kolhapur and that the Applicant will reside at 13/547, Near Ganesh Mandir, Gajanan Colony, 100 Feet Road, Shamrao Nagar, Sangli, District – Sangli.

10. As far as the antecedents against the Applicant and an apprehension that the pressure will be brought on the witnesses is concerned, Ms. Solkar, learned Counsel for the Applicant has made a statement that the Applicant will not enter the District – Kolhapur. Thus, the said apprehension is also taken into consideration.

11. The Applicant does not appear to be at risk of flight.

12. Accordingly, the Applicant can be enlarged on bail by imposing strict conditions.

13. In view thereof, the following order:-

ORDER

- (a) The Applicant – Abhishek Manoj Hawaldar be released on bail in connection with C.R. No.348 of 2023 registered with the Rajarampuri Police Station, District – Kolhapur on his furnishing P.R. Bond of Rs.50,000/- with one or two solvent sureties in the like amount.
- (b) The Applicant shall not enter the Kolhapur district after being released on bail, except for reporting to the Investigating Officer, if called, and for attending the trial.
- (c) On being released on bail, the Applicant shall furnish his cell phone number and residential address to the Investigating Officer and shall keep the same updated, in case of any change thereto.
- (d) The Applicant shall report to the Sangli City Police Station, District – Sangli twice in a week i.e. on Monday and Thursday of every week between 11.00 a.m. and 1.00 p.m. till the conclusion of the trial. The Police Inspector of Sangli City Police Station, District – Sangli to communicate details thereof to the Investigating Officer.
- (e) The Applicant shall not directly or indirectly make any inducement, threat, or promise to any person acquainted with the facts of the case so as to dissuade such a person from disclosing the facts to the Court or to any Police personnel.
- (f) The Applicant shall not tamper with the prosecution evidence and shall not contact or influence the Complainant or any witness in any manner.
- (g) The Applicant shall attend the trial regularly. The Applicant shall co-operate with the Trial Court and shall not seek

unnecessary adjournments thereat.

- (h) The Applicant shall surrender his passport, if any, to the Investigating Officer.

14. The Bail Application is disposed of accordingly.

15. It is clarified that the Trial Court shall decide the case on its merits uninfluenced by the *prima facie* observations made in this Order.

[MADHAV J. JAMDAR, J.]