

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

CRIMINAL BAIL APPLICATION NO. 493 OF 2023

Pankaj Harishchandra Mhatre ... Applicant

Versus

The State of Maharashtra ... Respondent

***WITH
INTERIM APPLICATION NO. 640 OF 2023
IN
CRIMINAL BAIL APPLICATION NO. 493 OF 2023***

Sachin Balkrishna Kene ... Intervener

IN THE MATTER BETWEEN

Pankaj Harishchandra Mhatre ... Applicant

Versus

The State of Maharashtra ... Respondent

Mr. Vinod Kashid a/w Mr. Sumit Bhoite for the Applicant

Ms. P. P. Shinde, A.P.P for the Respondent-State

Mr. Ganesh Bhujbal i/b Mr. B.D. Shinde for the Intervener

API Mr. Shahaji Bharat Narde is present in Court

***CORAM : REVATI MOHITE DERE, J.
FRIDAY, 19th JANUARY 2024***

P.C. :

1 This is the third bail application preferred by the applicant, seeking his enlargement on bail in connection with C.R. No. I-138/2017 registered with the Dombivli Police Station, for the alleged offences punishable under Sections 302, 143, 147, 148, 149, 323, 504, 506 of the Indian Penal Code r/w Sections 3, 25 and 27 of the Arms Act.

2 Perused the application. The applicant's first bail application i.e. Criminal Bail Application No. 2307/2019 was dismissed as withdrawn on 16th October 2019, as the Court (Coram : Revati Mohite Dere, J.) was not inclined to enlarge the applicant on bail. The said order is at Exhibit `C' at page 318 of the application.

3 The second application preferred by the applicant was rejected on merits by this Court (Coram : Revati Mohite Dere, J.) vide order dated 7th April 2021 passed in Criminal Bail

Application No. 108/2021. The said order is at Exhibit `D' at page 324 of the application. It appears that the said order was challenged before the Apex Court and that the SLP preferred by the applicant before the Apex Court was withdrawn by the applicant, with liberty as prayed for, i.e. liberty was granted to the applicant to renew his prayer for bail at the appropriate stage. The aforesaid application has been filed after about 2½ years of the second bail application, which was rejected on merits.

4 Learned counsel for the applicant states that the applicant is in custody since 1st June 2017 for about 6 years and 7 months and that till date, charge has not been framed in the said case. He submits that the applicant has no antecedents and as such, having regard to the role assigned to the applicant and his incarceration, the applicant be released on bail.

5 Learned counsel for the applicant, on instructions, of the applicant's brother-Keval Harishchandra Mhatre, states that

the applicant will attend the trial Court on every date along with advocate and will not impede the trial under any circumstance. Statement accepted.

6 Learned A.P.P as well as learned counsel for the intervener oppose the bail application, however, they do not dispute that till date, charge has not been framed in the said case. Learned A.P.P states that the applicant be directed to stay outside the jurisdiction of the Dombivli Police Station, considering that there is a case registered as against the co-accused after they were enlarged on bail.

7 A perusal of the complaint lodged by Sachin (brother of deceased-Vikrant), shows that two days prior to the incident i.e. on 28th May 2017, the applicant alongwith some of the co-accused had abused Vikrant and threatened him as Vikrant had objected to cutting of trees. According to the complainant-Sachin, on 30th May 2017, again at 10:30 a.m, there was an

altercation between Vikrant and co-accused Shriram on account of parking of JCB Machine. The complainant has alleged that the co-accused Shriram abused Vikrant and also threatened him with dire consequences. The complainant has alleged that on the very same day i.e. on 30th May 2017 at 2:00 p.m, the applicant alongwith other accused encircled Vikrant, out of which, one of the accused fired at Vikrant. As far as the applicant is concerned, he has alleged to have been armed with a weapon i.e. weapon like rifle. The role attributed to him is that he stopped people to enter the circle which was formed to corner Vikrant. Admittedly, no weapon has been recovered from the applicant. Admittedly, the applicant is not alleged to have fired at Vikrant. No doubt, Sections 302, 143, 147, 148, 149, 323, 504, 506 of the Indian Penal Code have been applied, however, having regard to the applicant's role that he had not fired at Vikrant and having regard to the fact that he is incarcerated for about 6 years and 7 months; and having regard to the statements made by the learned counsel for the applicant, on instructions that the applicant will attend the

trial Court on every date along with his advocate and will not seek adjournments and will cooperate in the conduct of the trial, the application is allowed on the following terms and conditions :

ORDER

- (i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 50,000/- with one or more sureties in the like amount;
- (ii) The applicant shall not enter the jurisdiction of Dombivli Police Station, till conclusion of the trial, except for the purpose of attending the trial Court;
- (iii) The applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter;

(iv) The applicant to cooperate with the conduct of the trial and attend the trial Court on all dates and not seek any adjournment and will cooperate in the conduct of the trial, unless exempted;

(v) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(vi) The applicant shall file an undertaking with regard to clauses (ii) to (v) in the trial Court, within two weeks of his release;

(vii) If the applicant fails to appear before the trial Court, or there is breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

8 Considering that the trial is pending for more than 6 years and that two accused are still in custody, the trial is expedited.

9 The application is disposed of in the above terms.

10 It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

11 In view of the above order, nothing survives for consideration in the Interim Application No. 640/2023. The same stands disposed of accordingly.

12 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.