



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.473 OF 2023

Balu Vishnu Kachara

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Hemant Ingle a/w. Ms. Jasmeet Kaur, Mr. Pratik Ingle and Mr. Vedang Deshpande i/b. Prashant S. Goyal, Advocates, for the Applicant.

Mr. P. H. Gaikwad, APP, for the Respondent-State.

Mr. Baban Sukar Gavit, P.S.I.-Talasari Police Station, District – Palghar, present.

CORAM: MADHAV J. JAMDAR, J.

DATED : 28th MARCH 2024

PC:-

1. Heard Mr. Ingle, learned Counsel for the Applicant and Mr. Gaikwad, 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.	20 of 2016
2.	Date of registration of F.I.R.	05/02/2016
3.	Name of Police Station	Talasari, District-Palghar

4.	Section/s invoked	395, 397, 353, 186, 333, 504 and 506 of the I.P.C., 1860
5.	Date of incident	04/02/2016
6.	Date of arrest	27/07/2021
7.	Date of filing of Charge-sheet	02/04/2021

3. As per the prosecution case, on the date of the incident, the officers of the State Excise Department were patrolling at village Udhwa on Kodad Road in the night on 4th February 2016. At that time, it was found that the present Applicant along with other co-Accused were transporting illegal liquor in two vehicles. The said vehicles were intercepted and stopped by the personnel of the Excise Department. The Accused fled the spot. Further, the personnel of Excise Department were moving the said vehicles and the liquor cases to Udhwa Police Station for further legal action and at that time, all the Accused together came there in a vehicle and assaulted the Excise Department personnel and physically assaulted them all with wooden sticks and took away the entire aforesaid stock of liquor seized by them and also the seized vehicles.

4. Mr. Ingle, learned Counsel for the Applicant submitted that the incident in question occurred on 4th February 2016. The Applicant was arrested on 27th July 2021 and till date there is no progress in the trial. He submitted that all other co-Accused have been enlarged on bail and therefore parity is applicable to the present Applicant. He relied on the Order dated 12th February 2021 passed by the learned Additional Sessions Judge, Palghar in Criminal Bail Application No.33 of 2021. He therefore, submitted that the Applicant is entitled to be released on bail.

5. On the other hand, Mr. Gaikwad, learned APP for the Respondent-State strongly opposed the Bail Application. He submitted that the incident in question took place on 4th February 2016, F.I.R. was registered on 5th February 2016 and the Applicant could not be arrested as he was absconding and ultimately arrested after a period of almost 5 years. He submitted that the offence is very serious and is punishable under Sections 395, 397, 307, 353, 332, 333, 326, 341, 427, 120-B of the *Indian Penal Code, 1860* and under Sections 65(a) & (e) of the *Bombay Prohibition Act, 1949*. He submitted that the Excise Officers were physically assaulted in the Police Station and both the said vehicles which

were taken into custody by the officers of the Excise Department along with the entire stock of liquor was taken away by the Accused. He pointed out the F.I.R. dated 5th February 2016 wherein it is specifically mentioned that the present Applicant assaulted the Excise Officer with a stick. He submitted that the Applicant is a hardened criminal engaged in importing and transporting liquor illegally in and around Palghar district. He submitted that there are 6 criminal antecedents against the Applicant. The said antecedents are set out in paragraph No.15 of the affidavit-in-reply dated 24th January 2024 of Sanjeev Balkrishna Pimpale, Sub-Divisional Officer, Dahanu Division, District Palghar, which reads as under:-

Sr. No.	C.R. No.	Police Station	Sections Invoked	Current Status
1	20/2011	Talasari	395, 341, 336, 427 and 506 of the <i>I.P.C., 1860.</i>	Acquittal
2	16/2013	Talasari	143, 147, 148, 149, 336, 323, 427, 504 and 506 of the <i>I.P.C., 1860.</i>	Acquittal
3	59/2014	Talasari	143, 147, 148, 149, 324 and 427 of the <i>I.P.C., 1860.</i>	Pending
4	04/2013	Bhilad	3, 25(1)(b) of the <i>Arms Act, 1959</i>	Pending
5	12/2021	Gholwad	395, 397, 307, 353, 332, 333, 326, 341, 427, 120-B of the <i>I.P.C., 1860.</i> 65 (a) and (e) of the <i>Bombay Prohibition Act, 1949</i>	Pending

6	20/2016	Talasari	395, 397, 353, 186, 333, 504 and 506 of the <i>I.P.C.</i> , 1860.	Pending (present case)
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He therefore, submitted that the Bail Application be rejected.

6. Perusal of the record shows that the incident in question occurred in the year 2016 and the Applicant was absconding and therefore necessary action was taken including the issuance of the proclamation. *Prima facie*, there is substance in the contention of Mr. Gaikwad, learned APP that the Applicant is not only involved in an offence of importing and transportation of liquor illegally but the vehicles in which the said liquor was being transported were taken into custody by the Excise Officers and they were assaulted and the Accused fled with the said vehicles and the entire stock of liquor seized by the officers of the Excise Department. In the F.I.R. it is specifically mentioned that the present Applicant has assaulted the Excise Officers. Apart from that, admittedly, the present Applicant was absconding from the year 2016 till 2021 and in fact action was required to be taken against him including the issuance of a proclamation etc.

7. The present Applicant is involved in the offences as set out herein above. Although, it is the contention of Mr. Ingle, learned Counsel for the Applicant that as far as the two offences are concerned, the Applicant has been acquitted, yet there are a total of four cases pending against the present Applicant, including the present case.

8. Mr. Ingle, learned Counsel for the Applicant heavily relied on the Order dated 12th February 2021 passed by the Additional Sessions Judge, Palghar in Criminal Bail Application No.33 of 2021 granting bail to one of the co-Accused Bharat Lakshi Khevra. However, perusal of the F.I.R. shows that no specific role in the said assault has been attributed to said co-Accused. As far as the Order dated 12th February 2021 concerning said co-Accused-Bharat Lakshi Khevra, it is specifically mentioned that the other three Accused are absconding and said Accused was arrested on 26th September 2020. In any case in the F.I.R., a specific role has been attributed to the present Applicant and role in the actual assault appears to have been attributed to the present Applicant. Section 164 statement of the witness-Keshav Dattu Bhurkud (Page-234)

and Santosh Annasaheb Pawar (Page-230) also supports the case of the prosecution.

9. Parameters of granting bail are well settled and are as follows:-

- (i) nature and gravity of circumstances in which offence is committed;
- (ii) position and status of Accused person with reference to victim and witnesses;
- (iii) likelihood of the Accused person fleeing from justice;
- (iv) tampering with witnesses;
- (v) history of the case as well as of its investigation.

If the above facts and parameters are applied to the facts and circumstances of the present case, then no case is made out for grant of bail.

10. Accordingly, the Applicant is not entitled for grant of bail.

11. The Bail Application is rejected.

12. However, as the Applicant is incarcerated since 27th July 2021 and the offence is of the year 2016, the learned Trial Court is requested to make an endeavour to conclude the trial expeditiously.

13. Liberty is granted to the Applicant to prefer a fresh Bail Application after a period of one year, if there is no substantial progress in the trial.

14. The Bail Application is disposed of accordingly.

[MADHAV J. JAMDAR, J.]