

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 767 OF 2024

Rajsingh Dhankush Gujar

Applicant

.. (Org. Accused No. 9)

Versus

State of Maharashtra

.. Respondent

.....

- Mr. Kapil Dave a/w Mr. Santosh Thakur for Applicant
- Mr. Y.Y. Dabke, APP for State
- Mr. P.B. Todase, PSI, Bhiwandi Police Station, Dist Thane is present

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 15, 2024

P. C.:

1. Heard Mr. Dave, learned Advocate for Applicant (Org. Accused No. 9) and Mr. Dabke, learned APP for State.

2. Present Bail Application No. 767 of 2024 is filed by Applicant (Org. Accused No. 9) in crime registered under Crime No. 428/2022 by Bhiwandi Taluka Police Station for offences punishable under Sections 393, 398 r/w Section 34 of IPC and Section 3 r/w Section 25 of Indian Arms Act.

3. There are total 11 accused who have been indicted out of which 5 accused have already been granted bail vide orders dated 10.08.2023 and 20.10.2023. Today Bail Application No. 417/2014 filed by Accused No. 8 was before me and after hearing the learned

Advocate for accused No. 8 and the learned Prosecutor, I have enlarged accused No. 8 on bail also, albeit on terms.

4. In so far as Applicant (accused No. 9) and the present Bail Application is concerned, the chargesheet indicts accused No. 9 being the perpetrator of the firing incident which has occurred at the scene of crime at the time of incident. Briefly stated the truck of the first informant was intercepted by a second truck, occupants of which desired to indulge in stealing the copper scrap which was carried in the truck of the first informant. Perusal of FIR as also the chargesheet which is filed reveals that after interception 4 of the accused entered into the informant's truck through the driver's cabin door while dispossessing the informant. It is the informant's case that while quarrel and skirmish took place inside the driver's cabin with one of the accused, the other accused short at him injuring him. After hearing the commotion, public started gathering there due to which four assailants who had entered the driver's cabin jumped out and ran away, rather escaped in the jungle nearby though it is the Investigating Officer's case that there was involvement of 11 accused

5. The incident recorded by the First Informant is fully corroborated by the statement of a rickshaw driver, a witness which is appended at page No. 34 of the Bail Application. In fact, the rickshaw driver has recorded that on hearing the commotion, he stopped his

rickshaw, got down and came near the truck's cabin. He heard the commotion and skirmish between the first informant and four assailants and would record that he heard a gun shot. As opposed to the two statements; one of the first informant and the other of the rickshaw driver who is one of the witnesses, the spot panchnama at page No. 71 of the Bail Application rather speaks to the contrary. According to the spot panchnama, there were two bullets fired and found embedded; one below the seat next to the driver and second embedded in a black colour top placed on the engine of the truck, both being 7.6 mm bullets which were fired from the firearm. Next, in view of the factual details of physical appearance given by the informant, the Investigating Officer has not carried out the test identification parade (TIP) till date which is the admitted position. There is no forensic science laboratory report also placed on record so as to understand as to whether firing took place from the weapon used by the assailant. Next, recovery of weapon is also intriguing in the present case. The weapon has been recovered from accused No. 7, Vinod Kumar Shivchandra Sahani in the present case. He has in fact been granted bail by the learned Trial Court on 20.10.2023. The question that would arise before the Court is the nexus of the present Applicant (Org. Accused No. 9) to the commission of the act of firing which does not stand proved from the statements of the witnesses

recorded by the Investigating Officer and from the statement of the first informant and the charge sheet that is filed does not prove as to whether it was accused No. 9 who was involved in using the weapon to fire the bullet shot which wounded the first informant. It has also not been established as to how the weapon landed in the custody of accused No. 7 from whom it was recovered, if it is the prosecution case that accused No. 9 was involved in commission of the direct act of firing from the weapon on the first informant. It needs to be stated that the weapon was seized from accused No.7 in Bihar.

6. In view of the above facts, I am of the clear opinion that in absence of TIP and forensic science laboratory report, there is no *prima facie* proof linking the accused No. 9 to the act of opening fire and injuring the first informant. Accused No. 9 has been arrested on 09.06.2022. Role of accused No. 9 can be clearly spelt out on parity with other accused in the present case. There is nothing on record placed by the prosecution to indict and hold accused No. 9 to have used the fire arm in the commission of crime even on *prima facie* basis. In that view of the matter, accused No. 9 deserves parity and enlargement on bail. Hence on perusal of the statements of the witnesses appended to the present Bail Application and the statement of the first informant, I do not see any material whereby accused No. 9 can be indicted and is required to suffer further imprisonment.

Considering that the trial will be protracted and the vehicle used in the crime as also the fire arm used in the crime having been seized and recovered, the present Bail Application of accused No. 9 deserves to be allowed by imposing appropriate conditions. Hence, I pass the following order:-

ORDER

- (i) Bail Application No. 767 of 2024 stands allowed;
- (ii) Applicant (org. Accused No. 9) – Rajsingh Dhankush Gujar is directed to be released on bail of surety and P.B.S.B of Rs. 30,000/- (Rs. Thirty Thousand Only);
- (iii) Applicant and Surety to submit photo copies of their Aadhar Card, permanent residential address proof and first page of bank pass book or online bank account extract.

Amberkar

[MILIND N. JADHAV, J.]

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