

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1150 OF 2023

Jitendra *alias*
Bapu Rajaram Mane

.Applicant

Versus

The State of Maharashtra

.Respondent

Mr. Akhilesh Dubey a/w. Mr. Sushant Walimbe & Mr. Hrutik Chavan, Advocate, for the Applicant.

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

CORAM: MADHAV J. JAMDAR, J.
DATE : 30.01.2024

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1. Heard Mr. Dubey, learned Counsel appearing for the Applicant and Mr. Gaikwad, learned APP appearing 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.	127 of 2021
2. Date of registration of F.I.R.	06.08.2021
3. Name of Police Station	Vishrantwadi Police Station, Pune
4. Sections invoked	392, 397 r/w. 34 of the Indian Penal Code, 1860 37(1)(3), 135 of the Maharashtra Police Act, 1951 4 & 25 of the Arms Act, 1959
5. Date of incident	06.08.2022

6. Date of arrest	11.08.2022
7. Date of filing Charge-sheet	07.10.2022

3. As per the prosecution case, two unknown persons came on a motor cycle and obstructed the informant's Auto Rickshaw wherein she was travelling with her sister-in-law, and threatened them with a pistol and snatched *Ganthan* i.e. *Mangalsutra* of the informant.

4. It is the contention of learned Counsel appearing for the Applicant that the Applicant is in custody since 11.08.2022 i.e. since about one year and six months. He further submitted that investigation has been completed and Charge-sheet has been filed and the Applicant was arrested merely on a suspicion. He submitted that there is no direct evidence connecting the present Applicant to the incident in question.

5. Mr. Gaikwad, learned APP appearing for the Respondent - State vehemently opposed the Bail Application on the ground that there is a recovery of pistol and gold at the instance of the Applicant. He further pointed out that the statement of the jeweller who has stated that the Applicant had come to him with a *Ganthan* and told him that the said *Ganthan* is that of his mother and that he wants to sell the same to raise funds for his mother who was hospitalised and was undergoing medical treatment. He

further submitted that there are four antecedents against the present Applicant. He submitted that the *modus operandi* of the Applicant is that he used to visit different cities and in the night, he used to threaten women on public roads and would then snatch their jewellery. He further submitted that the matter is listed before the learned Trial Court on 31.01.2024 for the purpose of framing of charge. He submitted that an endeavour will be made to dispose of the trial expeditiously.

6. A perusal of the record shows that there is a recovery of a pistol and gold at the instance of the Applicant. The present Applicant, along with the Investigating officer, had gone to the jeweller whose statement has been recorded. The jeweller's statement supports the prosecution case. Thus, apart from recovery, corroborating evidence is available.

7. There are four antecedents, details of which are as under :-

POLICE STATION	C. R. NUMBER	SECTIONS INVOKED
Shirur Police Station, Beed	259 of 2017	380 & 461 of the Indian Penal Code, 1860
M.I.D.C. C.I.D.C.O. Police Station, Aurangabad	367 of 2021	392 r/w. 34 of the Indian Penal Code, 1860
M.I.D.C. C.I.D.C.O. Police Station, Aurangabad	421 of 2021	392 r/w. 34 of the Indian Penal Code, 1860
Swargate Police Station, Pune	177 of 2021	392 r/w. 34 of the Indian Penal Code, 1860

Antecedents, as mentioned above, show that the same have taken place at different cities i.e. Beed, Aurangabad and Pune. Thus, there is substance in the contention of Mr. Gaikwad, learned APP.

8. Mr. Dubey, learned Counsel appearing for the Applicant submitted that antecedents cannot be a ground for rejection of a bail Application. He relied on a decision of the Supreme Court of India in the case of *Prabhakar Tewari v. State of U.P.* reported in (2020) 11 SCC 648. In the said case, the Supreme Court has held that even if the alleged offence is grave and serious in nature and if there are several criminal cases pending against the accused, such factors by themselves cannot be the basis for refusal of bail. Thus, it is clear that the Supreme Court has held that various factors are required to be taken into consideration while considering a prayer for bail.

9. It is the settled legal position that the following parameters are *inter alia* required to be taken into consideration for granting bail:-

- (i) the nature and gravity of the circumstances in which the offence is committed;
- (ii) the position and the status of the accused with reference to the victim and the witnesses;

- (iii) the likelihood, of the accused fleeing from justice;
- (iv) tampering with witnesses;
- (v) the history of the case as well as of its investigation.

It is also a settled legal position that at the stage of consideration of the bail application, the Court is not required to enter into a detailed analysis of the evidence in the case.

10. In the facts and circumstances of this case and on the touchstone of the above parameters, the Applicant is not entitled to be enlarged on bail.

11. The Sessions Case is listed before the learned Trial Court on 31.01.2024 for framing of charge. Mr. Gaikwad, learned APP appearing for the Respondent - State submits that the prosecution will make an effort to conclude the trial expeditiously.

12. The learned Trial Judge is requested to conclude the trial expeditiously. However, the Applicant is granted liberty to prefer a fresh bail Application after six months in case there is no substantial progress in the trial.

13. Accordingly, this is not a fit case to grant bail to the Applicant. The Bail Application stands rejected, subject to above.

[MADHAV J. JAMDAR, J.]