

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1591 OF 2023

SANTOSH
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Baba Mallappa Pawar

...Applicant

Versus

State of Maharashtra

...Respondent

Mr. R. V. Gupta, a/w Rohit Vaishya, for the Applicant.

Mr. Y. M. Nakhwa, APP for the State/Respondent.

PSI Meher (Pairani) V. B. Nagar Police Station, present.

CORAM: N. J. JAMADAR, J.

DATED: 15th JANUARY, 2024

ORDER:-

1. Heard the learned Counsel for the parties.
2. This is an application for bail in Session Case No.1000 of 2019 arising out of CR No.55 of 2019 registered with Vinoba Bhawe Police Station, Mumbai, for an offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code").
3. Janu Mallappa Pawar alias Bhilla was the step-brother of the applicant and co-accused. Accused and the deceased were allegedly on inimical term. On 5th March, 2019, at about 10.00 am. the deceased was shot at. Initially it was reported that some unknown person had fired at the deceased. ADR No.17/2019 came to be recorded. Subsequently, Nitesh

Hiralal Pawar, the nephew of the deceased, lodged a report with the allegations that on account of animosity the accused had killed the deceased. The first informant stated that Kishor Jadhav, his maternal uncle, who had come to the hospital, had informed him that co-accused Vinod Pawar had fired at the deceased. At that time, the applicant and his brother Raju Pawar were nearby. The applicant was seen near Rolex Hotel.

4. The learned Counsel for the applicant submitted that the applicant has been falsely roped in only for being the brother of accused No.1, on account of inimical relations between the parties. The first informant had initially named accused No.1 Vinod only. In fact, when the ADR was recorded, it was reported that the deceased was shot by known person.

5. The learned APP resisted the prayer for bail. It was submitted that an eye witness, namely Kishor Ghadge, has stated that the applicant was also present at the time of the occurrence and had, in fact, instigated accused No.1 Vinod by exerting him to fire at the deceased. It was further submitted that the applicant has jumped the bail when he was released on bail during Covid-19 Pandemic.

6. The learned Counsel for the applicant countered the submissions. Copy of the *roznama* of the proceedings before the learned Sessions Judge was tendered for the perusal of the Court.

7. It appears that the applicant – accused No.3 appeared before the learned Sessions Judge all along and even when the bail application was rejected by the learned Sessions Judge, the applicant was present in Court and he was taken in custody. In this view of the matter, the ground of the applicant having made himself scarce cannot be pressed into service against the applicant.

8. On the merits of the matter, it is *prima facie* evident that the applicant was not initially named by the first informant. Even in the FIR, the role attributed to the applicant was that of being around the scene of occurrence. In the statement which appeared to have been recorded on 5th March, 2019, the first informant had initially named accused No.1 Vinod Pawar only as the assailant, who had shot at the deceased. Though Kishor Ghadge claimed that the applicant was present at the time of the occurrence, *prima facie* it appears that even before the arrival of the applicant – co-accused No.1 Vinod had allegedly fired at the deceased.

9. Evidently, the parties were on inimical terms. Presence of the applicant at the time of alleged occurrence and the role of the applicant therein, *prima facie*, appears debatable and a matter for trial.

10. In the aforesaid view of the matter, a *prima facie* case is made out to exercise the discretion in favour of the applicant. Material witnesses seem to have been examined. Thus, the possibility of tampering with evidence seems remote. I am, therefore, inclined to allow the application.

11. Hence, the following order:

ORDER

- (i) Application stands allowed.
- (ii) The applicant Baba Mallappa Pawar be released on bail in CR No.55 of 2019 registered with Vinoba Bhave Police Station, Mumbai, on furnishing a P.R. Bond of Rs.30,000/- with one or more sureties in the like amount.
- (iii) The applicant shall mark his presence at the concerned police station on the first Monday of every month in between 10.00 am. to 12.00 noon till the conclusion of the trial.
- (iv) The applicant shall not tamper with the prosecution

evidence. 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 him from disclosing the facts to Court or any police officer.

- (v) On being released on bail, the applicant shall furnish his contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.
- (vi) The applicant shall regularly attend the proceedings before the jurisdictional Court.
- (vii) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

Application disposed.

[N. J. JAMADAR, J.]