



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3081 OF 2023**

Pintu Hiralal Madhesiya	...	Applicant
versus		
The State of Maharashtra	...	Respondent

Mr. Rahul Singh with Mr. Rajesh Singh i/by Rajesh Singh and Associates, for Applicant.

Mr. S.R.Agarkar, APP for State.

Mr. S.B.Kuchekar, PSI Shantinagar Police Station, present.

CORAM: N.J.JAMADAR, J.

DATE : 6 FEBRUARY 2024

P.C.

1. Heard the learned Counsel for the parties.
2. The applicant who is arraigned in C.R.No.451 of 2022 registered with Shantinagar Police Station, Bhiwandi, for the offences punishable under Sections 302, 326, 504 read with Section 34 of the Indian Penal Code, has preferred this application to enlarge him on bail.
3. The indictment against the applicant and the co-accused Samshersingh Gautam and an absconding accused is that on the night intervening 22nd and 23rd July 2020, the accused had an altercation with the deceased Sajjad Abdul Hamid Ansari over sleeping at an open place at Siraj Hashmi's building near Taj Hotel. The accused was allegedly shoed away the deceased. After some time, the accused had returned to the said spot and assaulted the deceased by means of a stone.

4. Learned Counsel for the applicant submitted that there is no material to connect the applicant with the alleged offences. FIR was lodged against unknown persons. The persons who claimed to have reached the scene of occurrence gave description of the persons who were allegedly seen after the occurrence. However, the material on record does not indicate that the test identification parade was held to establish the identity of the assailants.

5. Learned APP resisted the prayer for bail. It was submitted that the witnesses – Auranzeb Muzzamil Hussain and Monu Ahmed Sayyad have described the features of the persons who were involved in an altercation with the deceased prior to the alleged occurrence. Those descriptions match the features of the applicant. Moreover, the clothes and weapon of offence i.e. stone, have been recovered at the instance of the accused. Hence, the applicant does not deserve to be enlarged on bail.

6. I have perused the FIR. First informant – Kamruddin Khan has referred to the incident that had occurred at about 00.10 a.m. on 23 July 2020, in which two unknown persons had a quarrel with the deceased. Thereafter, the deceased went to sleep. At about 2.45 a.m., when the first informant returned to the scene of occurrence along with Monu Sayyed, the deceased was lying in an injured state. The first informant does not claim that he had seen the assailants at the spot. The statements of Auranzeb Hussain and Monu Sayyed also prima facie do not indicate that they have seen the assailants at a time proximate to the alleged occurrence.

7. Evidently, there is no eye witness to the alleged occurrence. Identity of the assailants is, thus, a matter for trial. As the investigating agency does not claim to have conducted test identification parade, at this stage, prima facie, there is no nexus between the applicant and the accused. I am, thus, inclined to exercise the discretion in favour of the applicant.

8. Hence, the following order :

ORDER

(i) The Application stands allowed.

(ii) The Applicant - Pintu Hiralal Madhesiya be released on bail in C.R.No.452 of 2020 registered with Shantinagar Police Station on furnishing a PR bond in the sum of Rs.30,000/- and one or two sureties in the like amount to the satisfaction of the trial Court.

(iii) The applicant shall mark his presence Shantinagar Police Station on first Monday of every month between 11 am to 1 pm 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.)