

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3920 OF 2023

SANTOSH
SUBHASH
KULKARNI

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Date: 2024.03.06
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Danish Pirmohammad Pathan

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. V. S. Tiwari, a/w Priya Muthupandi and Priti Tiwari, for
the Applicant.

Mr. Shailesh Ghag, APP for the State/Respondent.

PSI Sandeep Yadav, Antop Hill Police Station, present.

CORAM: N. J. JAMADAR, J.

DATED: 4th MARCH, 2024

ORDER:-

1. Heard the learned Counsel for the parties.
2. This is an application for bail in CR No.230 of 2023 registered with Antop Hill Police Station for the offences punishable under Sections 397, 394 and 202 read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code").
3. The indictment against the applicant and the co-accused is that on 2nd July, 2023 at about 1.15 am while the first informant and his father-in-law were taking a walk, after dinner, near Noora Bazar Junction Dumping Station, Antop Hill, the applicant and co-accused came on a Scooty. The applicant was riding the Scooty. Co-accused Sahil Shaikh was the pillion rider.

The applicant caught hold of the injured from behind. Co-accused Sahil tried to snatch away the mobile phone handset, which the injured had. As the injured resisted, co-accused Sahil gave blow by means of knife on the chest and stomach of the injured. Thereafter the applicant and co-accused fled away with the mobile phone handset.

4. The learned Counsel for the applicant submitted that the role attributed to the applicant is that of catching hold of the injured. Neither the applicant had snatched away the mobile phone handset nor assaulted the injured. It was further submitted that in the history narrated before the Medical Officer, the injured alleged that he was caught hold of by two unknown persons. In contrast, in the FIR, the applicant and co-accused were named as the alleged robbers.

5. The learned APP resisted the prayer for bail. It was submitted that the offences were committed in furtherance of common intention. Moreover, there are antecedents which dis-entitle the applicants from bail.

6. From the perusal of the material on record, it appears that the role of snatching away the mobile phone handset as well as assaulting the injured by means of knife, has been attributed to co-accused Sahil. The property i.e. mobile phone handset, also

seems to have been recovered pursuant to the disclosure statement made by the co-accused Sahil. The role attributed to the applicant is that of catching hold of the injured from behind.

7. In the circumstances of the case, whether the applicant shared the common intention to cause grievous hurt to the injured while committing robbery would be a matter for adjudication at the trial. The applicant has been in custody since 2nd July, 2023. The applicant is 19 years of age.

8. I am, therefore, inclined to exercise the discretion in favour of the applicant.

9. Hence the following order:

: O R D E R :

- (i) Application stands allowed.
- (ii) The applicant be released on bail in CR No.230 of 2023 registered with Antop Hill Police Station, on furnishing a P.R. Bond of Rs.30,000/- with one or two sureties in the like amount.
- (iii) The applicant shall mark his presence at the Antop Hill Police Station on the first Monday of every month in between 10.00 am to 12.00 noon for a period of two years or till the conclusion of the trial, whichever is earlier.
- (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) The applicant shall stay away from Mumbai city and suburban districts for a period of two years or till the conclusion of the trial, whichever is earlier, except for the purpose of the attending the police station and proceedings before the trial court.
- (vi) 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.
- (vii) The applicant shall regularly attend the proceedings before the jurisdictional Court.
- (viii) 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 stands disposed.

[N. J. JAMADAR, J.]