

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 2027 OF 2024

Prasad Prabhakar Palande	...Applicant
Versus	
State Of Maharashtra	...Respondent

Mr. Tushar Khandare a/w Mr. Hemant Singh, Mr. Sugat Singh and P Ingle for the Applicant.

Mrs.Mahalaxmi Ganapathy, APP for Respondent-State.

CORAM	:	N. J. JAMADAR, J.
DATE	:	11th SEPTEMBER 2024

Digitally signed by D.A.ETHAPE
DN: cn=D.A.ETHAPE, o=JUDGE, ou=JUDICIAL
Date: 2024.09.12 20:05:00 +05'30'

PC.:

1. Heard Mr. Khandare, the learned Counsel for the Applicant and Mrs.Ganapathy, learned APP for the State.
2. The applicant, who is arraigned in C.R. No. 219 of 2022 registered with Wagle Estate Police Station, Thane, for the offences punishable under Sections 307, 326, 324, 323, 504, 506, 141, 143, 149 of the Indian Penal Code, 1860 and Sections 4 and 25 of the Arms Act, 1959, has preferred this application to enlarge him on bail.
3. Sumit Sapte, the first informant, lodged a report with the allegation that on 19th September 2022 between 01:00 am to 01:15 am., while he and his friends, including injured Vikram @

Bala Sonawane, were standing in front of the premises of Vishwakarma and Co., Shivshakti Nagar, the applicant and co-accused Chinmay Shinde (A1), Gaurav Shinde (A3) and others charged on them. Co-accused Chinmay Shinde (A1) stabbed injured Vikram. The applicant unleashed a blow by means of sword like sharp weapon on the stomach of Vikram, the injured. When the first informant went to the rescue of Vikram, the applicant inflicted a blow by means of a sharp weapon on first informant's head. The first informant further alleged that unknown associates of Chinmay Shinde (A1) and Prasad Palande (A2), the applicant therein, assaulted other witnesses, namely, Sanjay and Sunil, and a friend of Baba, by means of bamboo sticks, fists and kick blows in prosecution of the common object of the unlawful assembly. In the supplementary statement, the first informant and injured Vikram named the other co-accused also as the assailants.

4. Mr. Khandare, the learned Counsel for the Applicant, submitted that the genesis of the occurrence has been suppressed. It was submitted that few minutes prior to the alleged occurrence the injured Vikram has been seen with a big sword in the images captured by CCTV at Shivam Banquet Hall

which is located at Road No.34, Wagle Estate, Thane (West). Reliance was placed on an affidavit of Appasaheb Prabhakar Chaugule, who has also given a certificate under Section 65-B(4) of the Indian Evidence Act, 1872.

5. Mr. Khandare further submits that in the supplementary statement, the first informant and injured Vikram have made an endeavour to implicate as many persons from the accused party as possible by falsely naming them as the assailants. Noticing the unreliability of the said version the first informant and Vikram, this Court has granted bail to co-accused Bharat Wishwakarma, Poornima Chalke and Prathamesh Khetle. Therefore, the applicant who has been in custody for two years, deserves to be enlarged on bail.

6. Mrs. Ganapathy, the learned APP, resisted the prayer for bail. It was submitted that the distance between two places where the injured was allegedly captured in the CCTV, and the scene of occurrence is hardly one and half k.m. Therefore, the plea of *alibi* does not merit countenance as it cannot be said that the presence of the applicant at the time and place of the occurrence, was physically impossible.

7. The learned APP further submitted that there are statements of the first informant, injured Vikram and eye witnesses which squarely implicate the applicant as the person who assaulted the injured by means of a sword. The medical evidence lends support to the ocular account. Moreover, the applicant has antecedents. More than 10 crimes have been registered against the applicant at Vartaknagar, Kasar Wadavli, Wagle Estate and Ganeshpuri Police Station. In majority of the cases, the applicant has been arrayed for having committed bodily offences. Therefore, the applicant does not deserve to be enlarged on bail.

8. Vikram, the injured, has specifically named the applicant as the person who assaulted him by means of a sword like a sharp weapon, after co-accused Chinmay Shinde (A1) stabbed him. The injury certificate *prima facie* lends support to the claim of the injured. Three stab injuries were found on the person of the injured. The stab injury on the lateral wall of right side of abdomen is *prima facie* attributable to the blow allegedly given by the applicant by means of a sword like sharp weapon. The medical officer had designated all the three injuries as grievous.

9. To add to this, the first informant and other eye witnesses also attribute the same role of assault by means of a sword like a sharp weapon to the applicant. Sanjay Rawani has specifically named the applicant as the person who gave a blow by means of a sharp weapon on the stomach of the injured.

10. In the face of aforesaid material, it would be audacious to urge that there is no material to substantiate the role attributed to the applicant.

11. The thrust of the submission of Mr.Khandare was that the injured himself was seen armed with the weapon in the vicinity of the scene of occurrence in proximity to the occurrence. The said fact has been designedly suppressed. The subsequent endeavour of the injured and the informant to rope in the co-accused also underscores the falsity of their claims and improbabilises the accusation against the applicant.

12. I find it rather difficult to accede to this submission. First and foremost, the aforesaid material, which partakes the character of defence evidence, would be required to be tested at the trial. Secondly, even if it is assumed that the version of the first informant and injured, on some aspects of the matter, is

prima facie found incorrect, *ipso facto*, it does not imply that the entire prosecution case should be thrown overboard.

13. At this stage, there is *prima facie* overwhelming material to show that the applicant assaulted injured Vikram by means of a sword like a sharp weapon. The nature of the injuries sustained by the injured, the parts of the body selected by the assailants to inflict the blows and the potency of the weapons *prima facie* indicate that the assault was perpetrated with an intent to cause the death of the injured.

14. The applicant's antecedents also dissuade the Court from exercising the discretion in favour of the applicant. More than 10 cases are shown to have been registered against the applicant. Most of the cases are in respect of commission of bodily offences. Mr.Khandare attempted to salvage the position by submitting that the applicant has been enlarged on bail in those crimes.

15. The endeavour of Mr.Khandare does not merit acceptance unreservedly. The applicant's antecedents show that, the applicant has been arraigned in crimes with alarming frequency. The apprehension on the part of the prosecution of tampering with evidence and threatening the witnesses is required to be

appreciated in the aforesaid context.

16. Cumulatively, having regard to the material against the applicant, this does not seem to be a fit case to exercise the discretion in favour of the applicant.

17. Hence the following order:

ORDER

(i) The Application stands rejected.

(ii) 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 co-accused and the trial court shall not be influenced by any of the observations made hereinabove.

(iii) Application disposed.

18
19

(N. J. JAMADAR, J.)