

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 2244 OF 2024

Muzzamil @ Jishan Waris Khan

...Applicant

Versus

The State of Maharashtra

...Respondent

- Ms. Heena Mushtaq Ahmed, for Applicant.
- Mr. Prasanna P. Malshe, APP for State.
- Mr. Jitendra Gautam, for the First Informant.
- Mr. Raju R. Thuboh, P.I., Chunabhatti Police Station.

CORAM : MANISH PITALE, J.

DATE : 21st JUNE, 2024.

P. C. :

1. Heard, Ms. Heena Ahmed, for the applicant, Mr. Prasanna Malshe, learned APP for the State and Mr. Jitendra Gautam, learned counsel for the first informant.

2. The applicant has applied for bail in connection with First Information Report No.0371 of 2023 dated 27th August, 2023, registered at Chunabhatti Police Station, Mumbai, for the offences under Sections 302, 307, 326, 324, 323, 341 and other provisions of the Indian Penal Code (IPC), also also under the Arms Act and the Maharashtra Police Act.

3. The FIR was registered in the context of an incident that took place on 26th August, 2023. The applicant was not named in the FIR and he was also not named in the supplementary statement, but eventually he was

SHRIKANT
SHRINIVAS
MALANI

Digitally signed by
SHRIKANT
SHRINIVAS
MALANI
Date: 2024.06.21
18:14:59 +0530

arrested on 20th October, 2023, on the basis of statements given by the witnesses during the course of investigation. The applicant has remained behind bars in connection with the present FIR since 20th October, 2023.

4. The learned counsel appearing for the applicant submits that the applicant has no connection with the incident in question in the present case and that the applicant has been falsely implicated.

5. It is submitted that the applicant has not been arrayed as one of the 15 accused persons in the said FIR. It is emphasized that even in the supplementary statement, the name of the applicant did not feature. He was eventually arrested on 20th October, 2023.

6. By inviting attention of this Court to the statement of the informant, which led to registration of the FIR, the learned counsel for the applicant submitted that the presence itself of the applicant was not mentioned in respect of the said incident and hence, there was no question of attributing any specific role to him. It was further brought to the notice of this Court that in the aforesaid statement, before proceeding to describe the actual incident in question, the informant has indeed mentioned the name of the applicant along with some other persons, claiming that they were indulging in *Gundagardi* in the neighborhood.

7. In that light, the learned counsel for the applicant submitted that the Sessions Court while rejecting the bail application of the applicant committed an error in observing that since bodily offences were committed by the accused persons and the informant was under trauma, it was difficult for him to recall the names of the assailants, which could be the reason for absence of the name of the applicant in the statement leading to registration of the FIR. It was submitted that when the informant had indeed named the applicant as one of the persons who were allegedly engaging in *Gundagardi* in the neighborhood, it was surprising and contradictory that while describing the actual incident and ascribing specific roles to the various accused persons, the name of the applicant did not feature at all.

8. It was further submitted that the applicant appears to have been apprehended in the present case due to the fact that there are indeed other cases registered against him, but merely because the applicant is facing prosecution in other cases, the same cannot be a ground for implicating him in the present case. On this basis, it is submitted that since the applicant has made out a *prima facie* case in his favour, this Court may consider allowing the bail application, particularly when the applicant is ready to abide by conditions that may be imposed.

9. On the other hand, learned APP vehemently opposed the prayer

for bail. He submitted that the applicant is the person indulging in violence in the neighborhood and this is evident from as many as six cases in which he is named as accused in the FIR. It is brought to the notice of this Court that the applicant is facing prosecution for serious offences in all such cases. Attention of this Court is invited to statement of one Yakub Jamal Belim, which was recorded on 29th August, 2023, to contend that the role of the applicant is sufficiently described by the said witness, indicating that he was part of the conspiracy that led to assault on the victims, one of whom died in the incident on 26th August, 2023. Reliance was placed on statement of Hijab Fatma Sajidali, recorded on 06th September, 2023, wherein it was stated that the applicant was seen near his house, but when he saw the said witness and others, he allegedly ran away.

10. Much emphasis was placed on the fact that an order of externment was passed against the applicant on 21st February, 2023, for a period of 12 months and despite the said order, the applicant had violated the same and he was part of the conspiracy in the present case. Attention of this Court is also invited to the FIR dated 15th October, 2023, registered against the applicant and others in Police Station Chunabhatti, to state that despite the order of externment, the applicant had violated the same and visited the neighborhood to indulge in such violent act. In the said FIR, the applicant is alleged to have committed the offences, amongst other provisions, under

Section 307 of the IPC. On this basis, it was submitted that the present application may be dismissed.

11. The learned counsel appearing for the informant supported the contentions raised by the learned APP. He relied upon contents of an application for intervention prepared on behalf of the first informant. It was emphasized that copies of a number of non cognizable reports have been annexed to the intervention application to show that despite the aforesaid order of externment, the applicant violated the same with impunity and committed the violent act, including threatening innocent persons. It was emphasized that the applicant is a person given to violence and releasing him on bail would be wholly unjustified.

12. This Court has considered the material on record and the submissions advanced on behalf of the parties. The material placed on record and relied upon by the learned APP, as well as the learned counsel appearing for the informant does indicate that the applicant is indeed facing prosecution in a number of cases. In fact, he has been arrayed as accused in at least six FIRs. Such material does indicate the propensity of the applicant to violate law, although the charges being leveled against him would have to be proved in Court in accordance with law. This Court is also informed that in respect of one of the FIRs registered against him, the Sessions Court by an order dated

23rd February, 2024, rejected his bail application and that he is still in jail in connection with the said offences.

13. Even if there is material to indicate that the applicant is facing prosecution for serious offences in a number of cases, for considering the present bail application, it would be necessary to appreciate as to what is the material that connects the applicant with the FIR registered in the present case for the incident that took place on 26th August, 2023.

14. A perusal of the FIR shows that the same was registered on 27th August, 2023. The statement of the first informant describes the incident in detail. Names of the accused persons are taken and specific role is prescribed to each one of them. It is significant that the informant has not named the applicant as one of the persons present during the course of the incident, leave alone ascribing any specific role to him.

15. In the statement of the informant, before proceeding to describe the incident in question and naming specific accused persons, the informant has indeed referred to the name of the applicant, along with a few others, alleging that they have been indulging in *Gundagardi* in the neighborhood. This is the only reference to the applicant in the aforementioned statement, which led to registration of the FIR. It is perhaps for this reason the applicant has not been arrayed as an accused along with 15 persons specifically named as

accused in the subject FIR.

16. The name of the applicant does not feature even in the supplementary statement. The applicant was arrested on 20th October, 2023 for his alleged involvement in the present case.

17. Learned APP could place his reliance only on statements of the said Yakub Jamal Belim recorded on 29th August, 2023 and the statement of Hijab Fatma Sajidali dated 06th September, 2023 in an effort to connect the applicant with the present case. He also relied upon the memorandum prepared under Section 27 of the Evidence Act of the applicant after his arrest, wherein he conceded to having been part of the conspiracy concerning the incident in question. In the said statement, the applicant is said to have shown the place where the conspiracy was hatched.

18. This appears to be the only material for the present against the applicant. The statement of the Yakub Jamal Belim only indicates that a third person told him on his mobile phone that an incident was likely to take place, which would be against the victims and that in the build up to the said incident, the role of the applicant was mentioned as the person who would be sending boys. The statement of Hijab Fatma Sajidali shows that she merely stated that the applicant was present near his house and when the said witness and others saw him, he ran away. Such material may indicate that the

applicant had violated the order of externment with impunity.

19. In fact, NCRs on which the learned counsel for the informant relied would also indicate that the applicant violated the order of externment and was seen in the neighborhood. In fact, the FIR registered on 15th October, 2023, against the applicant and others shows that there are specific allegations about he having violated the order of externment and attacked the victim in the said case, leading to registration of the FIR for offences under Sections 307 and other provisions of the IPC.

20. This Court is of the opinion that merely because there is material to indicate as to the manner in which the applicant violated the order of externment and FIR dated 15th October, 2023 was registered against him in respect of a completely separate and independent incident, it cannot be said that such material necessarily connects the applicant with the present incident.

21. This Court has appreciated the material relied upon by the learned APP to show that the applicant was part of the conspiracy. But, such material appears to be tenuous and in any case, the informant did not even mention about the presence of the applicant at the time of the incident, leave alone ascribing any specific role to him.

22. In view of the above, this Court is convinced that a *prima facie*

case is made out by the applicant in his favour and the bail application deserves to be allowed, subject to imposing specific conditions.

23. The application is allowed in the following terms :

- (A) The applicant shall be released on bail in connection with First Information Report No.0371 of 2023 dated 27th August, 2023, registered at Chunabhatti Police Station, Mumbai, on furnishing P.R. bond of ₹ 50,000/- and one or two sureties in the like amount, to the satisfaction of the Trial Court
- (B) The applicant shall not enter the jurisdiction of Police Station Chunabhatti, during the pendency of the trial.
- (C) The applicant shall not tamper with the evidence in any manner. He shall not influence the informant, witnesses or any other persons concerned with the case.
- (D) The applicant shall not in any manner contact or communicate with the informant or witnesses in the present case.
- (E) The applicant shall cooperate with the proceedings before the Trial Court. He shall attend the proceedings before the Trial Court on each and every date, except when specifically exempted by the Trial Court.

(F) Upon being released, the applicant shall forthwith place on record before the Trial Court as well as inform the Police Station Chunaabhatti about his contact number and address with updates in case of change. In any case, the applicant shall report to the local police station having jurisdiction where he resides on 2nd and 4th Monday of each month between 10.00 a.m. and 12.00 noon. He shall inform the Trial Court about his place of residence and the police station to which he would be reporting.

24. Violation of any of the aforesaid conditions, would lead to cancellation of bail. It is made clear that the bail being granted to the applicant in the present case shall not accrue to his benefit in any other cases, as bail applications, if any, in other cases shall obviously be decided on their own merits.

25. The observations made in the present order are limited to the question of grant of bail to the applicant and the Trial Court shall proceed further on merits without being influenced by the observations made hereinabove.

26. The application is disposed of.

(MANISH PITALE, J.)