

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.2891 OF 2024

Nilesh <i>Alias</i> Anna Shankar Khatape	...Applicant
<i>Versus</i>	
The State of Maharashtra	...Respondent

Mr. Satyavrat Joshi a/w Ms. Reena Prajapati i/by Sakshi S. Mane, Advocates, for the Applicant.
 Mr. Y.M. Nakhwa , APP, for the Respondent-State.
 Mr. Sagar Pralhad Pawar, PSI, Sinhgad Road Police Station, Pune City, present.

CORAM: MADHAV J. JAMDAR, J.
DATED : 23rd JULY 2024

PC:-

1. Heard Mr. Joshi, learned Counsel appearing for the Applicant and Mr. Nakhwa, learned APP appearing for the Respondent-State.

2. This regular Bail Application is preferred under Section 439 of the *Code of Criminal Procedure, 1973*. The relevant details are as follows:-

1.	C. R. No.	419 of 2022
2.	Date of registration of F.I.R.	26/09/2022
3.	Name of Police Station	Sinhagad Road, District-Pune
4.	Section/s invoked	302, 141, 143, 144, 147, 148 & 149 of the I.P.C., 1860;

		4 & 25 of the Arms Act, 1959; 37(1) & 135 of the Bombay Police Act, 1951.
5.	Date of incident	25/09/2022
6.	Date of arrest	19/12/2022
7.	Date of filing of Charge-sheet	23/12/2022

3. As per the prosecution case, there are a total of 14 Accused. The incident took place in the night of 25th September 2022 to 26th September 2022. The Accused were having a party and at that time they noticed that the deceased was in the vicinity. One of the Accused asked the deceased as to what he was doing at that place. The Victim then fled the place. The Accused chased him and brought him back and the Accused assaulted the Victim. The Victim succumbed to the resultant injuries.

4. It is the submission of Mr. Joshi, learned Counsel appearing for the Applicant that as per the prosecution case, the only role attributed to the Applicant is that the Applicant had held right hand of the deceased and he was pulling the deceased. He submitted that there is no motive to commit the crime. He submitted that even as per the prosecution case, the deceased was a stranger and he came at the spot where all the Accused were having a party and the Accused thought that the deceased had come there for committing the theft

and therefore, the incident in question had taken place. He submitted that in any case, even if the entire prosecution case is accepted as it is, then also offence under Section 302 of the *Indian Penal Code, 1860* is not made out. He submitted that there are total 14 Accused and out of which 7 have been released on bail.

5. On the other hand, Mr. Nakhwa, learned APP submitted that in the incident, an innocent person has been mercilessly assaulted by the Accused on the pretext that the deceased was a thief. He pointed out the statements of witnesses – Mr. Balasaheb Ramchandra Kudale, Mr. Digambar Sundar Kamble, and the Post-Mortem Examination Report. He pointed out that there are about 18 injuries and some of them are on the vital part. He therefore submitted that there is material available against the present Applicant which shows that the Applicant was present at the place of the incident and the Applicant has actually participated in the incident. He therefore submitted that the bail be not granted. Mr. Nakhwa, learned APP, on instructions, submitted that there are no antecedents.

6. A perusal of the record shows that the incident in question has taken place on 25th September 2022. The F.I.R. has been registered on 26th September 2022 and the Applicant has been arrested on 19th

December 2022. Charge-sheet has been filed on 23rd December 2022. Till date, there is no progress in the trial and even the charge is also not framed yet. As per the Charge-sheet, there are 34 witnesses proposed to be examined by the prosecution. Accordingly, the trial will take considerable time to conclude.

7. *Prima facie*, there is substance in the contention that there was no motive to commit the crime and as deceased, a stranger, came at the spot where all Accused were having a party they thought that the deceased had come there to commit theft.

8. The Applicant has no antecedents.

9. As the Applicant is incarcerated since one year and eight months and as there is no progress in the trial, the Applicant is entitled to be enlarged on bail by imposing conditions.

10. The Applicant does not appear to be at risk of flight.

11. Accordingly, the Applicant can be enlarged on bail by imposing conditions.

12. In view thereof, the following order:-

ORDER

- (a) The Applicant- Nilesh *Alias* Anna Shankar Khatape be released on bail in connection with C.R. No.419 of 2022 registered with the Sinhagad Road Police Station, District- Pune on his furnishing P R. Bond of Rs.50,000/- with one or two sureties in the like amount.
- (b) On being released on bail, the Applicant shall furnish his cell phone number and residential address to the Investigating Officer and shall keep the same updated, in case of any change thereto.
- (c) The Applicant shall report to the Sinhagad Road Police Station, District-Pune on every Sunday between 2.00 p.m. and 4.00 p.m. until the conclusion of the trial.
- (d) 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 such a person from disclosing the facts to the Court or to any Police personnel.
- (e) The Applicant shall not tamper with the prosecution evidence and shall not contact or influence the Complainant or any witness in any manner.
- (f) The Applicant shall attend the trial regularly. The

Applicant shall co-operate with the Trial Court and shall not seek unnecessary adjournments thereat.

(g) The Applicant shall surrender his passport, if any, to the Investigating Officer.

13. The Bail Application is disposed of accordingly.

14. It is clarified that the Trial Court shall decide the case on its merits and uninfluenced by the *prima facie* observations made in this order.

[MADHAV J. JAMDAR, J.]