

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 2995 OF 2024

Manish Sheshmani Tiwari

...Applicant

Versus

The State of Maharashtra

...Respondent

- Mr. Vinod Kashid a/w Mr. Sumit Bhoite and Mr. Abdul Shaikh, for Applicant.
- Ms. Megha S. Bajoria, APP for Respondent.
- Mr. S. V. Jadhav, PSI, Sakinaka Police Station.

CORAM : MANISH PITALE, J.

DATE : 04th DECEMBER, 2024.

P. C. :

1. Heard learned counsel for the applicant and the learned APP for respondent – State.

2. The applicant was arrested on 01st August, 2020 in connection with First Information Report No.0931 of 2020 dated 01st August, 2020, registered at Police Station Sakinaka, Mumbai, initially for offences under Sections 323 and 326 of the Indian Penal Code, 1860 (IPC). Subsequently the victim died on 11th August, 2020 and therefore, charge-sheet was filed against the applicant and the co-accused persons for offences under Sections 302, 307, 323 and 326 read with Section 34 of IPC. The investigation was completed and charge-sheet was filed on 20th January, 2023.

3. The record shows that earlier bail application filed on behalf of

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the applicant bearing Criminal Bail Application No.530 of 2021 was dismissed as withdrawn on 18th November, 2021, after this Court was not inclined to grant bail to the applicant on merits. Subsequently, another bail application bearing Criminal Bail Application No.556 of 2022 was filed. The said application was disposed of as withdrawn on 17th May, 2022, on the basis of statement made on behalf of the applicant that in lieu of change in circumstances, the applicant was intending to approach the Sessions Court. The change in circumstance was that co-accused person was granted bail by an order dated 07th February, 2024, passed by the Sessions Court.

4. On 03rd May, 2024, the Sessions Court rejected the bail application of the applicant on the ground that filing of the aforesaid Criminal Bail Application No.556 of 2022 was not disclosed by the applicant. The learned APP at the outset highlighted the aforesaid fact and it is submitted that due to the aforesaid conduct of the applicant, the present application ought not to be entertained.

5. The learned counsel for the applicant submitted that there was some confusion between the advocates representing the applicant before the Sessions Court and before this Court. It is for this reason that the application pending before this Court was withdrawn on 17th May, 2024 and thereafter, an application filed before the Sessions Court was also not pressed on 10th June,

2024, under the impression that the pending application before the High Court would be pursued. It is submitted that in such a situation, this Court may not reject the present application, at the outset on the said ground, and that an opportunity may be granted to make submissions on behalf of the applicant.

6. Considering the fact that the applicant was arrested on 01st August, 2020 and he has suffered incarceration for a period of more than 4 years and 4 months, this Court has shown indulgence and heard the learned counsel for the applicant.

7. It is submitted on behalf of the applicant that a perusal of the material on record would show that even according to the statements given by the eye witnesses, the role attributed to the co-accused person, who was granted bail by the Sessions Court by order dated 07th February, 2024, is much higher than the role attributed to the applicant. It is emphasized that the FIR was registered against the unknown persons and the eye witnesses also stated that the only role of the applicant was that he had assaulted the victim by way of fists and kicks. But, a specific overt act was attributed to the co-accused person, who has been granted bail, in the form of assault by way of wooden stick. Therefore, it is submitted that not only on the principle of parity, but considering the lesser role attributed to the applicant, this Court may consider

allowing the application.

8. Additionally, it was submitted that while the charge-sheet shows that the prosecution intends to examine as many as 22 witnesses, while the charges were framed as far back as on 20th January, 2023, not a single witness has been examined, thereby indicating that the trial would take substantial period of time for completion. It is submitted that although the applicant does have criminal antecedents, that in itself may not be taken as a factor to reject the present bail application.

9. On the other hand, the learned APP submitted that the applicant is not entitled to argue on merits in the light of two earlier applications having been withdrawn before this Court, in one of which this Court had indicated that the bail application was liable to be rejected on merits. It is further submitted that the trial could be expedited instead of granting bail to the applicant and it was further indicated that in the light of criminal antecedents of the applicant, there is every possibility of the applicant influencing the witnesses and indulging in further criminal activity, as all the earlier FIRs have also been registered in the very same police station.

10. This Court has considered the rival submissions. There can be no doubt about the fact that the earlier two applications having been withdrawn by the applicant and at least on one occasion this Court having indicated that

it was not inclined to grant bail to the applicant on merits, the applicant cannot be permitted to re-argue the aspect of bail on the merits of the matter.

11. Yet, a crucial factor cannot be ignored that co-accused person has been subsequently granted bail by the Sessions Court by order dated 07th February, 2024. A perusal of the said order shows that one of the factors taken into consideration by the Sessions Court was the period of incarceration of 3 years suffered by the co-accused person. It is an admitted position that the applicant in the present case, having been arrested on 01st August, 2020, has suffered incarceration for more than 4 years and 4 months.

12. The statements of the witnesses placed on record also indicate that the role attributed to the applicant can be said to be lesser than the specific overt act attributed to the co-accused person, who has been already granted bail. This aspect also not been ignored. This Court further finds that the fact that the charge is framed as far back as on 20th January, 2023, and not a single witness has been examined, indicates that the trial would take considerable period of time in the light of the fact that the charge-sheet shows that 22 witnesses are proposed to be examined.

13. Even though the applicant does have criminal antecedents and the learned APP has expressed apprehension in that regard, the same can be addressed by imposing stringent conditions on the applicant.

14. In view of the above, the application is allowed in the following terms:

- (A) The applicant shall be released on bail in connection with FIR No.0931 of 2020 dated 01st August, 2020, registered at Police Station Sakinaka, Mumbai, on furnishing P.R. Bond of ₹ 50,000/- with one or two sureties in the like amount, to the satisfaction of the Trial Court.
- (B) The applicant shall not enter the jurisdiction of Sakinaka Police Station.
- (C) The applicant, upon being released on bail, shall report to the Police Station Andheri, on the first Monday of every month between 10:00 a.m and 12:00 noon., during the pendency of the trial.
- (D) The applicant shall cooperate with the Trial Court for expeditious disposal of the trial. He shall attend the proceedings before the Trial Court on each and every date, except when exempted for reasons to be recorded in writing.
- (E) The applicant shall furnish the details of his active mobile numbers and his local address to the Investigating Officer and the Trial Court within two weeks of being released on

bail.

- (F) The applicant shall not influence the informant, witnesses or any other persons concerned with the present case, during the pendency of the trial.

15. In the event the applicant granted bail, violates any of the conditions recorded hereinabove, the bail granted to her would be liable to be cancelled.

16. It is made clear that the observations made hereinabove in the present order are limited to disposing of the present bail application. The Trial Court shall proceed on merits in the present case without being influenced by the observations made hereinabove.

17. The application is disposed of.

(MANISH PITALE, J.)