

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.777 OF 2024

Vinayak Hariram Pillae ... Applicant
Vs.
State of Maharashtra ... Respondent

WITH
INTERIM APPLICATION NO.2044 OF 2024
IN
BAIL APPLICATION NO.777 OF 2024

Mr. Mubin Solkar a/w. Mr. Tahir Hussain and Mr. Anas Shaikh i/b. Tahera Qureshi for Applicant in BA/777/2024.

Mr. Raju Suryawanshi for Applicant in IA/2044/2024.

Mr. Balraj B. Kulkarni, APP for Respondent-State.

Mr. N. B. Gaikwad, PSI, Shivaji Nagar Police Station, Ambernath (East) present.

CORAM : MANISH PITALE, J.

DATE : JUNE 13, 2024

P.C. :

. Heard learned counsel appearing for the applicant, learned APP appearing for the respondent-State and learned counsel appearing for the first informant.

2. By this application, the applicant is seeking bail in connection with FIR dated 29.10.2020 registered at Shivaji Nagar Police Station, District Thane in respect of offences registered against the applicant and six other accused persons under Sections 302, 324, 143, 147 and 149 of the Indian Penal Code, 1860 (IPC) as also under Sections 4 and 27 of the Arms Act, 1959 and under Sections 37(1) and 135 of the Maharashtra Police Act, 1951.

3. It is the case of the prosecution that in the incident in question, one person died and others were injured, including the first informant.

The dispute appears to have arisen out of business rivalry in the sense that the two rival groups are in the business of supplying building material and installing grills on buildings in Thane region.

4. According to the first informant, after the dispute arose at the place of the incident, the accused persons brutally assaulted the victims causing death of one of them.

5. In the present case, accused No.5 - Vilas Khaire and accused No.4 - Attar Anis Khan were granted bail. While accused No.5 was granted bail by the Supreme Court by order dated 12.10.2023, accused No.4 was granted bail by this Court by order dated 14.12.2023. The applicant before this Court is accused No.3.

6. This application was adjourned on a few occasions earlier for the reason that the order dated 14.12.2023 granting bail to the accused No.4 was challenged by the first informant before the Supreme Court and the Supreme Court issued notice in the special leave petition, which is still pending.

7. The learned counsel for the applicant submitted that pendency of the special leave petition cannot be a ground for adjourning hearing in the present application, for the reason that the applicant can demonstrate that he was not involved in the incident at all and that, in any case, the role attributed to him was different and much lesser than the role attributed to the accused No.4 - Attar Anis Khan, who was granted bail by the order dated 14.12.2023.

8. It was submitted that if this Court peruses the initial statement leading to registration of the FIR and compares it with the supplementary statement of the informant, recorded after CCTV footage was shown to him and *panchanama* was drawn, there are glaring

contradictions and inconsistencies. Such material cannot lead to a conclusion even about the presence of the applicant at the spot of the incident, leave alone any specific role being attributed to him. It was further submitted that the alleged eyewitnesses also did not name the applicant specifically as regards the said incident.

9. The learned counsel for the applicant further submitted that the applicant is merely an employee of the main accused i.e. accused No.1 and his very presence at the spot of the incident is extremely doubtful.

10. Reliance is placed on the order dated 12.10.2023 passed by the Supreme Court in the case of Vilas Khaire i.e. accused No.5 (Criminal Appeal No.3182 of 2023), wherein the Supreme Court took into account the time period for which the said accused had already remained behind bars, as also the role assigned to the said accused even if the charge-sheet and the material filed therewith was to be taken into consideration. It is submitted that since the very presence of the applicant can be said to be doubtful, this Court may consider enlarging the applicant on bail, particularly because he has remained behind bars for three years and eight months.

11. The learned APP opposed the prayer made in the present application. He submitted that the material available on record along with the charge-sheet sufficiently demonstrates presence of the applicant at the spot of the incident and therefore, the applicant cannot claim that he was not responsible for the incident. The genesis of the incident was the business rivalry and the applicant being the employee of accused No.1 was present at the spot of the incident and he did play an active role as is evident from the statements of witnesses and the material on record. It is further submitted that since the Supreme Court has issued notice in the special leave petition filed by the first informant challenging the order passed by this Court granting bail to the accused

No.4, this Court may consider deferring the hearing of the present application.

12. The learned counsel appearing for the first informant supported the contentions raised by the learned APP on behalf the State. He further added that the material on record clearly establishes the presence of the applicant at the spot of the incident and since he can be said to be a member of an unlawful assembly, he would be liable for the actions of the other members of such an unlawful assembly.

13. This Court has considered the material on record in the light of the charge-sheet and the documents filed therewith. A perusal of the statement which led to registration of the FIR would show that in the first instance, the first informant not only mentioned the presence of the applicant at the spot of the incident but he claimed that the applicant had caused injury on the thigh of the deceased victim by means of a knife. The supplementary statement of the first informant recorded on 04.11.2020 after the CCTV *panchanama* was drawn on 31.10.2020, shows that at one place, he does name the applicant as one of the persons present at the time of the incident, but he has not attributed any role to the applicant as regards the assault on the victims. In the subsequent part of the supplementary statement, he stated that his elder brother told him that the applicant had used a knife.

14. A perusal of the CCTV *panchanama* dated 31.10.2020 shows that the first informant identified the individuals present at the spot of the incident and he also specifically named them in the context of the individual role of those accused present at the spot of the incident. The first informant identified each of such accused persons on the basis of the clothes that they were wearing at the time of the incident. A perusal of the aforesaid *panchanama* shows that while identifying individual accused persons in the context of the actual assault, he has nowhere

named the applicant and no role has been attributed to him. In fact, in the *panchanama*, the applicant has not been named at any place.

15. This gives credence to the contention raised on behalf of the applicant that the very presence of the applicant at the spot of the incident can be said to be doubtful. In any case, the variance in the description of the role attributed to the applicant by the first informant in his statement, which led to registration of the FIR, as compared to his supplementary statement also creates some doubt about the actual role played by the applicant at the time of the incident. As noted hereinabove, in the CCTV *panchanama*, the applicant has not named or identified the presence of the applicant at all.

16. A perusal of the order dated 12.10.2023 passed by the Supreme Court while granting bail to the accused No.5 - Vikas Khaire shows that the Supreme Court took into consideration two factors in favour of the said accused No.5. The Supreme Court found that the said accused No.5 had undergone two years and ten months of custody as an under-trial and secondly, that the role assigned to him even as per the prosecution story was different.

17. In the present case, as noted hereinabove, the presence of the applicant *prima facie* can be said to be doubtful and in any case there is variance in the statements given by the first informant as regards the role attributed to him. These factors must inure to the benefit of the applicant.

18. This Court finds that the hearing on the present application is not required to be postponed merely because of pendency of the special leave petition filed by the first informant challenging the order granting bail to the accused No.4, simply for the reason that the role attributable, if at all to the applicant, is different from that of the accused No.4 and this Court is of the opinion that the very presence of the applicant can be

said to be doubtful.

19. 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.0251 dated 29.10.2020, registered with Shivaji Nagar Police Station, District Thane on furnishing PR Bond of Rs.50,000/- [Rupees Fifty Thousand only] and one surety in the like amount;
- (B) Except for attending the trial, the applicant shall not enter the area of Thane District, Mumbai and Mumbai Suburban District till the conclusion of the trial;
- (C) The applicant shall report to the police station nearest to his residence while residing outside the aforesaid districts once every first Sunday of the month, between 11:00 a.m. and 1:00 p.m. till 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 him from disclosing the facts to Court or any police officer. The applicant shall not tamper with evidence;
- (E) 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; and
- (F) The applicant shall attend the trial regularly. The applicant shall co-operate with the trial Court and shall not seek unnecessary adjournments.

20. Needless to say, violation of any of the aforesaid conditions would make the applicant liable to face proceedings for cancellation of bail. It is also clarified that the observations made in this order are limited to the question of grant of bail to the applicant in the present application and that the trial Court shall proceed further, without being influenced by the observations made in this order.

21. The bail application is disposed of.

22. In view of the above, the application for intervention is also disposed of.

(MANISH PITALE, J.)

Minal Parab