

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2512 OF 2024

Krushna Dilip Kusalkar .. Applicant
Versus
The State of Maharashtra .. Respondent

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- Mr. Nitesh Jaywant Mohite, Advocate for Applicant.
 - Mr. Rushikesh M. Pethe, APP for Respondent.
 - API – Hemant Dhole, Manpada Police Station, Dombivli (East).
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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 26, 2025

P.C.:

1. Heard Mr. Mohite, learned Advocate for Applicant and Mr. Pethe, learned APP for Respondent.

2. This is an Application under Section 439 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking Bail in connection with C.R. No.443 of 2020 registered with Manpada Police Station, Dombivli for offences punishable under Sections 307, 324, 323, 504 read with Section 34 of the Indian Penal Code, 1860 (for short 'IPC').

3. Applicant is one of the accused persons out of two accused persons in the present crime. First Informant is the father of injured victim who has lodged police complaint stating that on 06.11.2020 at about 11:50 p.m. the First Informant alongwith his son Kailas were in their house with the present Applicant called Kailas out of his house

after which there was a verbal talk between them which led to injured victim giving out a loud shout. The First Informant alongwith other members of the house rushed side out and saw that there was a scuffle and fight going on between Kailas and both Accused persons who were seen to be assaulting Kailas with a wooden rod / plank and knife. In so far as co-accused No.1 is concerned, he has been granted bail by this Court by order dated 19.12.2023. Order is appended at page No.74 of the Application.

4. Mr. Mohite has persuaded me to read the statement of the injured victim – Kailas appended at page No.37 and would submit that it is stated by the injured victim that due to a precursor incident during which he had manhandled the present Applicant, the present incident took place due to a grudge held by Applicant and even according to the injured victim both Accused persons assaulted him with wooden rod (लाकडी दांडका) and a knife. *Prima facie*, on reading the statement of the injured victim what Mr. Mohite submits is found in the said statement. Mr. Mohite would therefore claim parity for the present Applicant.

5. In further support of his submissions, Mr. Mohite would draw my attention to the witness statements appended at page Nos.31 and 32 of the Application of the eye witnesses to the incident who have seen the verbal altercation and assault on the injured victim by the accused persons. These statements are given by one Ms. Mangala

Subhash Masule and Mr. Manoj Madhukar Ingale. Both of them have *prima facie* in their statement stated that it is Accused No.1 – Shubham who was instrumental in inflicting the blow by knife on the injured victim to which they were a witness and not the Applicant.

6. Mr. Pethe, learned APP has persuaded me to consider three aspects in the present case. He would submit that the injuries which have been inflicted on the injured victim are grievous injuries as confirmed by the medical certificate appended at page No.64 of the Application. He would submit that said injuries are caused by a sharp weapon and in that regard he would persuade me to consider the reasons of rejection of bail by the Trial Court. He would submit that in paragraph No.4 of the order dated 18.12.2021, the learned Trial Court has while rejecting bail Application of Applicant stated that if the injured victim had not got timely medical treatment, it would have possibly resulted in his death. Hence, from this he would persuade the Court to consider the gravity of the crime.

6.1. He would next persuade the Court to consider that there is *prima facie* material placed on record to show complicity of Applicant on the basis of eye witness statements and would seek rejection of the Bail Application.

7. With the able assistance of Mr. Mohite, learned Advocate for Applicant and Mr. Pethe, learned APP for Respondent I have perused

the record of the case. Submissions made by them have received due consideration of this Court.

8. *Prima facie* it is seen that even according to the statement of injured victim, it is both the accused persons who had assaulted him with the wooden rod (लाकड़ी दांडका) and a knife. Mr. Pethe, learned APP would point out that the injuries are grievous in nature. However, considering the witness statements and the statement of the injured victim himself, role of both Accused persons is spelt out as they both having used a knife to inflict injury on him. Reading of the record also bears out the fact that there were two precursor incidents which led to the present incident / crime. It is infact admitted by the injured victim himself that on 30.06.2020, he had assaulted the present Applicant and that was one of the reason for the grudge being held by the present Applicant and co-accused against him.

9. That apart, as pointed out from page No.15, it is *prima facie* seen that there was an earlier precursor incident which had occurred on 15.02.2019 between the parties which is also one of the reason. The third reason which persuades me to consider the case of Applicant is his long incarceration pending trial. This Court while rejecting his previous Bail Application on 06.09.2023 had expressed its opinion that learned Trial Court should dispose of the pending trial as early as possible. That order is appended at page No.68. Since charges have

not been framed till date and possibility of the trial been commenced and completed in the near future is bleak, in that view of the matter, I am inclined to consider the Application of Applicant for grant of bail.

Bail Application is allowed subject to following conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;
- (ii) Before his actual release from jail, Applicant shall furnish his address where he proposes to reside after his release from jail to the concerned Police Station and also to the trial Court;
- (iii) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;
- (iv) Applicant shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;
- (v) Applicant shall co-operate with the conduct of trial and attend the trial Court on all dates unless specifically exempted and will not take any unnecessary

adjournments, if he does so, it will entitle the prosecution to apply for cancellation of this order;

(vi) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;

(vii) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner; and

(viii) In case of any infraction of the above conditions and / or two consecutive defaults in marking his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

10. It is clarified that the observations made in this order are limited for the purpose of granting Bail only and I have not made any observations on merits of the case. The trial shall be adjudicated on the strength of the evidence led and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

11. Bail Application No.2512 of 2024 is allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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