

Ajay

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 4299 OF 2024

Akash Subhash Hiwale

Applicant /
.. Accused

Versus

The State of Maharashtra

.. Respondent

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- Mr. Moin Khan a/w. Mr. Arif Khan, Advocates for Applicant.
 - Mr. Mayur S. Sonavane, APP for Respondent – State.
 - Mr. D.S. Sonawane, PSI Deonar Police Station present.
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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 27, 2025.

P.C.:

1. Heard Mr. Khan, learned Advocate for Applicant and Mr. Sonawane, learned APP for Respondent – State.

2. This is an Application under Section 439 of the Code of Criminal Procedure, 1973 seeking Regular Bail in connection with C.R.No.179 of 2024 registered with Deonar Police Station for the offences punishable under Sections 307, 323, 504, 506 and 506(2) of the Indian Penal Code, 1860 (for short “**IPC**”) and Sections 37(1)(a) and 135 of the Maharashtra Police Act, 1951.

3. Applicant has been arrested on 22.04.2024. Investigation is completed and charge-sheet has been filed. Prosecution case is that on the date of incident i.e. on 22.04.2024 at about 10:30 a.m. in the

morning the First Informant - victim was sitting outside his house when he was approached by the Applicant and without any provocation Applicant started abusing him in filthy language pursuant to which he inflicted stab injury on the First Informant.

4. Prosecution case is supported by statement of witnesses. There are 5 witness statements which are appended from page No.33 onwards to the Bail Application. Though 3 out of the 5 witnesses claim to be eye-witnesses *prima facie* reading of their statements, it is seen that there was a quarrel which ensued between Applicant and First Informant which was attempted to be resolved by some of the eye witnesses and during that quarrel Applicant removed a sharp weapon i.e. knife and injured the First Informant.

5. However, when the said witnesses statements are read namely that of Sushma, the sister in-law of the First Informant and Dinesh, the nephew of First Informant, it is seen that when the victim – First Informant called out to them they saw the First Informant lying in an injured state and have described the incident. They saw the Applicant having injured the First Informant and also threatened them if they came forward for helping the First Informant. However, on the contrary there are two other specific eye witnesses statements recorded by the prosecution; one is of an independent witness called Mahesh Bhimsha Pujari which is appended at page No.39 of the Bail

Application. This witness happens to be a common friend of Applicant and First Informant. He has stated that he reached the incident spot at about 10:30 a.m. and he saw that the First Informant was sitting outside his house after being injured by Applicant and he was attended to by his relatives namely Sushma, Dinesh and his mother who were applying bandage to the open wounds / injury suffered by him. His statement states that thereafter he took First Informant to the Hospital. The second statement of Mr. Aniket Pradeep Shinde, 14 year old nephew of First Informant is appended at page No.41 of the Bail Application. This statement does not corroborate with the statements of the eye witnesses according to prosecution. He has stated that he was present in the house when the incident took place and at the beginning of the incident the First Informant was not sitting outside his house when he was approached by Applicant. He categorically states that First Informant was inside his house and Applicant called him he went down to meet him and they both chatted for some time after which it escalated in to a verbal altercation and that altercation resulted in the incident which occurred. Two of the witnesses have also given conflicting version regarding from where the weapon was removed and used by Applicant. One of the witness states that Applicant removed the knife from his pocket whereas the eye witness to the incident namely Aniket Pradeep Shinde states that knife was removed from behind by Applicant. The weapon i.e. knife has been

recovered.

6. The crucial evidence which has been placed before me is the medical certificate which is appended at page No.66 issued by the V.C. Gandhi & M.A. Vora Municipal General Hospital which *prima facie* mentions that the all injuries are simple in nature.

7. Mr. Sonavane, learned APP has vehemently argued that the Court should take into cognizance that there are 12 injuries out of which 8 injures are stab wounds inflicted on various parts of the body. However on perusal of the medical certificate it is clearly seen that the the dimensions of the said wounds is negligible and that is precisely what qualifies them as simple injuries in the medical certificate itself.

8. Provocation for the fight has not been stated by any of the witnesses but only by the First Informant himself in the FIR. It is seen that there was precursor incident due to which there was animosity between the parties and the First Informant was going to lodge the complaint in the police station but he was prevented from doing so by his own mother. Save and except the aforesaid nothing is placed on record to show that the act of Applicant was a premeditated act and there was any plan on the part of the Applicant to commit the said incident for specifically invoking the provisions of Section 307 of IPC.

9. Be that as it may, this is my *prima facie* observation on the basis of the contradicting statements of the witnesses recorded by the

prosecution. In view of the above, the Applicant is enlarged on Bail.

Bail Application stands allowed on the following terms:-

- (i) Applicant – Akash Subhash Hiwale is directed to be immediately released from prison in connection with C.R. No.179 of 2024;
- (ii) Applicant is directed to be released on bail on furnishing P.R. Bond of Rs.25,000/- (Rs. Twenty Five Thousand only) with one surety of the like amount;
- (iii) Applicant shall report to the Investigating Officer at Deonar Police Station as and when called by the Investigating Officer;
- (iv) 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;
- (v) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (vi) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner;
- (vii) Applicant shall keep the Investigating Officer informed of his current address and mobile contact number and /

or change of residence or mobile details, if any, from time to time, as applicable; and

(viii) Any infraction of the conditions shall entail prosecution to apply for cancellation of bail granted to the Applicant.

10. It is clarified that the above observations in this order are limited for the purpose of granting bail only and I have not made any observations on merits of the case.

11. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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