

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

BAIL APPLICATION NO. 4339 OF 2024

Mohan Dasi @ D Mohan Kotayya Dasi

...Applicant

Versus

State of Maharashtra

...Respondent

- Mr. Mubin Solkar. a/w Ms. Tahera Qureshi and Mr. H. Shah, ,for the Applicant.
- Mr. Prashant Jadahv, APP for respondent – State.
- Mr. A.B. Gaikwad, PSI, Shivaji Nagar Police Station, present.

CORAM : MANISH PITALE, J.

DATE : 09th JANUARY, 2025.

P. C. :

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

2. By this application, the applicant is seeking bail in connection with FIR dated 29th October, 2020 registered at Police Station Shivaji Nagar, District Thane, in respect of offences registered against the applicant and 6 other accused persons under Section 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 was granted bail by the Supreme Court by an order dated 12th October, 2023, *inter alia*, taking into consideration the period of incarceration already undergone by the said applicant, which at that time was found to be about 2 years and 10 months. Accused No.4 – Attar Anis Khan was granted bail by this Court (*Coram : M.S. Karnik, J.*) by an order dated 14th December, 2023, passed in Bail Application No.3533 of 2023, *inter alia*, taking into consideration, the fact that the said accused had already remained incarcerated for a period of about 3 years and 2 months. It was also noted that that even the charge had not been framed.

6. By an order dated 13th June, 2024, this Court granted bail to accused No.3 – Vinayak Hariram Pillae in Bail Application No.777 of 2024. In the said order, this Court, *inter alia*, took into consideration certain discrepancies in the version of the incident given by the first informant

himself.

7. The applicant before this Court in this application is accused No.6. The learned counsel for the applicant submits that the applicant deserves to be granted relief on the principle of parity, considering the reasons recorded by this Court in the aforesaid order passed in favour of the accused No.3 – Vinayak Hariram Pillae.

8. It is submitted that this Court took into consideration the discrepancy in the manner in which the incident is described by the first informant in the statement that led to registration of the FIR on the one hand and in the supplementary statement on the other. It was further submitted that this Court may consider the fact that the applicant, having been arrested on 12th November, 2020, has suffered incarceration for a period of about 4 years and 2 months. The charge has been not been framed. There is no likelihood of the trial being completed within reasonable period of time.

9. On the other hand, the learned APP submits that there are eye witnesses to the incident. Attention of this Court is invited to the statement of eye witnesses to claim that not only the presence of the applicant is established but overt acts attributed to him are clearly stated, including use of dangerous weapon like knife. It is submitted that in the face of such material, this Court may not show any indulgence to the applicant.

10. A perusal of the order dated 13th June, 2024, passed in favour of the accused No.3 – Vinayak Hariram Pillae, shows that this Court recorded the following reasons while granting relief to accused No.3.

“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.”*

11. This Court is of the opinion that the aforesaid reasons would apply with equal force to the applicant herein also, for the reason that a perusal of the statement of the informant, leading to registration of the FIR, when compared to the supplementary statement recorded subsequently would show that there are, *prima facie*, glaring discrepancies in the genesis of the incident and its description. The statement of the informant, leading to registration of the FIR shows that, according to the informant, he was in his office at the date and time of the incident alongwith his friends and thereafter when they proceeded in the direction of the actual place of incident on foot, they were confronted by the accused persons, including the applicant and the assault took place. As opposed to this in the supplementary statement, the informant stated that he was in his office just before the date and time of the incident alongwith one Sonya and driver of a dumper truck came to the office and informed about the quarrel taking place between the accused persons and others

12. Apart from this, in the statement, leading to registration of the FIR, the informant specifically alleged that the applicant not only incited the

others to assault the victims but he used a knife to attack the deceased i.e. brother of the informant on his neck. As opposed to this in the supplementary statement of the informant, when he was confronted with the CCTV footage, he gave a completely different version to the effect that the applicant was present at the date and time of the incident but he assaulted the informant by way of fist and kicks and thereafter, pushed him on the ground. It was further stated that thereafter, the applicant threatened the informant by means of a *Koyata*. The version in the supplementary statement, upon the CCTV footage being perused, *prima facie* can be said to be completely different from the version on the basis of which the FIR was registered, insofar as the role of the applicant is concerned. Therefore, even if the presence of the applicant has been stated in both the versions, the overt acts attributed to him are found to be different and this aspect does inure in favour of the applicant to claim a *prima facie* case in his favour.

13. Apart from this, it is to be noted that in the present case, the applicant having been arrested on 20th November, 2020, has suffered incarceration for a period of about 4 years and 2 months. The other aforesaid accused persons were granted bail by the Supreme Court and this Court, *inter alia*, on the consideration of the period of incarceration already undergone, which in their case was less than the duration of incarceration already suffered by the applicant herein. This is evident from the order passed in favour of

accused No.4 on 14th December, 2023 in Bail Application No.3533 of 2023. It is to be noted that the Special Leave Petition (Cri.) No.2808 of 2024, filed against the said order has been recently dismissed by the Supreme Court on 02nd January, 2025.

14. This Court is convinced that apart from the ground of parity, the applicant herein deserves to be enlarged on bail on the ground of there being no possibility of trial being completed within a reasonable period of time. It is an admitted position that the charge is yet to be framed and even according to the learned APP, the proceedings before the Trial Court are now listed for framing of charge on 15th January, 2025.

15. At this stage, the learned APP submitted that the applicant has 8 criminal antecedents for bodily offences and this factor may be taken into consideration. The learned counsel for the applicant submits that the applicant has been acquitted in 4 out of 8 criminal cases and that in the remaining cases he has been granted bail. This Court is of the opinion that the fact that the applicant has criminal antecedents in itself cannot be a ground to deny bail when a case for granting bail on merits is made out by the applicant.

16. This Court is inclined to impose conditions identical to those imposed on accused No.3, while granting him bail.

17. Accordingly, the application is allowed in the following terms:

- (A) The applicant shall be released on bail in connection with FIR No.0251 dated 29th October, .2020, registered with Police Station Shivaji Nagar, District Thane, on furnishing PR Bond of ₹ 50,000/- and one or 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 01:00 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.

18. 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.

19. The bail application is disposed of.

(MANISH PITALE, J.)