

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 5123 OF 2024

Akash Anil Tilak

.. Applicant

Versus

State of Maharashtra

.. Respondent

.....

- Mr. Ravi Dwivedi a/w Mr. Satish Shukla & Mr. Sainath S. Baji for Applicant
- Mr. Balraj B. Kulkarni, APP for State
- Mr. Mahendra Shinde, PI, RCF Police Station

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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 04, 2025

P. C.:

1. Mentioned at the time of rising.
2. Heard Mr. Dwivedi, learned Advocate for Applicant and Mr. Kulkarni, learned APP for State.
3. Applicant - accused has filed the present Application for regular bail under Section 439 of the Code of Criminal Procedure, 1973 (for short, "**Cr.PC.**") in connection with Crime No. 318/2024 registered with RCF Police Station, Mumbai for the offences punishable under Sections 302, 452, 141, 143, 147, 149, 323, 504, 506(2), 120-B r/w 34 of Indian Penal Code, 1860 (for short, "**IPC**").
4. On 28.01.2025, this Court passed the following order:-

"1. Heard Mr. Dwivedi, learned Advocate for Applicant and Mr. Kulkarni, learned APP for State.

2. Applicant before me is arraigned as accused No. 6 in the crime in question. Accused Nos. 1 to 4 are the principal accused and indictment of accused Nos. 6 and 7 is on the ground that they are two unknown friends of theirs who participated in the crime. Identification of accused No. 1 to accused No. 4 is precise. In so far as present Applicant i.e. Accused No. 6 before me is concerned, I have impressed upon learned APP to show me any plausible linkage of the Applicant to the crime in question. All that he submits is that test identification parade (TIP) was conducted and the witnesses have identified participation of Applicant to be one of the unknown person in the crime. However apart from the statement across the bar, there is no material before this Court. What is intriguing is the fact that none of the principal accused have named the Applicant in their respective statements. That apart FIR merely records four principal accused along with two unknown persons having participated and present and nothing more. In that view of the matter, it is for the prosecution to show the nexus of the Applicant to the crime in question.

3. Learned APP has persuaded the Court to grant sometime to enable the IO to procure the report of TIP and place it before the Court. Needless to state that if such report is placed, the statement of the person who has identified the Applicant in his statement will be produced before the Court by prosecution. Prosecution is directed to produce the TIP report before the Court on the next adjourned date in order to ascertain the case of the prosecution about participation of the Applicant in the crime.

4. Since the matter is fully heard, place the same on board on **4th February, 2025**. To be placed under the caption "**First on Board.**"

5. Today Mr. Kulkarni, learned APP after taking instructions from the Investigating Officer (IO) would submit that attempts were made to identify the two unknown persons, however he would inform the Court that test identification parade (TIP) has not been conducted. Case of the prosecution on the basis of the FIR as also the statement of

the witnesses recorded does not identify the Applicant before me. In that view of the matter, the description given by complainant in the FIR of the two unknown persons has not been taken to its logical end till today.

6. Though it is argued by learned Advocate for Applicant that Applicant has been falsely implicated, the same shall be ultimately determined in the trial. Since the Applicant has not been identified in the FIR or any of the statements of the witnesses and as observed by the Court herein above that no TIP is conducted, there is no reason as to why the Applicant should suffer ignominy of incarceration any further. Needless to state that appropriate conditions can be imposed on the Applicant to ensure that he does not create any impediment in the trial.

7. Learned APP Mr. Kulkarni would vehemently submit that there is material in the form of CDR record and tower location enabling the presence of the Applicant near the scene of crime. However that on its own is not sufficient enough at this stage to arrive at a conclusion about complicity of the Applicant in crime unless there is appropriate supportive and corroborative evidence placed on record. The decision of the Supreme Court in the case of *State Vs. Pallulabid Ahmad Arimutta*¹ holding that CDR details of some of the accused or

1 SLP (Cri) No. 3242/2022 dated 10.01.2022

allegations of tampering of evidence by accused is an aspect that can be examined at the stage of trial. Considering that neither the FIR nor any of the statements referred to the presence of the Applicant or identifying the present Applicant, Applicant is entitled for grant of bail.

8. In view of the above, present Applicant is allowed in terms of prayer clause (a) subject to the following terms and 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) Applicant shall report to the Investigating Officer of concerned Police Station initially for the first two months on the third Saturday between 10:00 a.m. to 12:00 p.m. and thereafter as and when called;
- (iii) 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;
- (iv) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court. He shall deposit his

passport, if any, within two weeks after being released on bail with the Trial Court;

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

(vi) 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;

(vii) Any infraction of the above conditions shall entail cancellation of this order.

9. It is clarified that the 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.

10. Bail Application stands allowed and disposed.

[MILIND N. JADHAV, J.]

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by RAVINDRA
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Date: 2025.02.04
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