

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 2491 OF 2024

Dinesh Rajendra Kavthankar

Applicant

.. (Accused No. 1)

Versus

State of Maharashtra

.. Respondent

WITH

BAIL APPLICATION NO. 476 OF 2025

Vijay Prem Rupani

Applicant

.. (Accused No. 6)

Versus

State of Maharashtra

.. Respondent

.....

- Mr. Mithilesh Mishra a/w Ms. Agastya Desai for Applicant in BA 2491/24
- Mr. Karan Jain i/by Shrinidhi Sonak, Advocates for Applicant in BA 476/25
- Mr. Balraj B. Kulkarni, APP for Respondent - State

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 23, 2025

P. C.:

1. Heard Mr. Mishra, learned Advocate for Applicant in BA 2491/24; Mr. Jain, learned Advocate for Applicant in BA 476/25 and Mr. Kulkarni, learned APP for Respondent - State.

2. Bail Application No. 2491/24 is filed by Applicant - accused No. 1 Mr. Dinesh Rajendra Kavthankar and Bail Application No. 476/25 is filed by Applicant - accused No. 6 - Vijay Prem Rupani. Both the

Applications are tagged together since both the accused are arraigned as accused in the same crime. Mr. Kulkarni, learned APP would persuade the Court to hear only Bail Application No. 2491/24 since he has no instructions about listing of the second Bail Application No. 476/25. He seeks time to enable him to ascertain the role of Applicant - accused No. 6 in Bail Application No. 476/25. In that view of the matter, Bail Application No. 476/25 is adjourned to 02.05.2025.

3. In view of the above, the Court shall proceed with Bail Application No. 2491 of 2024.

BAIL APPLICATION NO. 2491/24 :-

4. Applicant - accused No. 1 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. I-193/2023 registered with Hill Line Police Station for the offences punishable under Sections 302, 307, 120(B), 201, 143, 145, 147, 148 and 149 of the Indian Penal Code, 1860 (for short, "**IPC**") and under Sections 37(1) and 135 of the Maharashtra Police Act, 1951. Applicant is arrested on 27.05.2023 and as on today, he has been in incarceration for the period of 1 year 10 months & 27 days.

5. Applicant-accused No. 1 is arrested on 27.05.2023 i.e. one day after the incident. The case of the prosecution against the Applicant is

that 5 hours before the occurrence of the alleged incident, Applicant was seen standing near the incident spot as per the witness statements which are recorded by the prosecution. According to prosecution case Applicant i.e. accused No. 1 alongwith a juvenile accused visited the incident spot to ascertain the presence of the victim. Further it is prosecution case that there was enmity between accused Nos. 1 and 2 on the one hand and the victim and therefore accused No. 1 gave a tip to accused No. 2 about the presence of the victim. Said witness statements are appended at page No. 148, 150, 151, 152 and 153 of the Application.

6. Mr. Mishra, learned Advocate for Applicant would submit that apart from the aforesaid 5 witness statements, there is no other role attributed to the present Applicant neither the prosecution has come out with any case to show nexus of Applicant to the present crime in question. He would submit that FIR filed by the first informant - complainant in the present case does not assign any role attributed to the present Applicant. He would submit that in the FIR, complainant has stated that assault was carried out by accused Nos. 2 and 3 for committing the present crime which has has been taken cognizance of by the Sessions Court while hearing Criminal Bail Application No. 1960/2023 in its order appended at page Nos. 575-581 of the Application. That apart he would submit that CDR which is appended

at page No. 379 of the Application *prima facie* shows that the Applicant was not even present at the incident spot at the time of the incident and he was at that time present at a completely different location which is *prima facie* evident from the tower location.

7. Mr. Kulkarni, learned APP has in his usual fairness considered the previous order passed by this Court on 05.03.2025 and has ascertained the precise role of the Applicant. He would submit that statements of the 5 witnesses *prima facie* attribute role to the Applicant only to the extent of his presence at the incident spot 5 hours before the time of happening of the actual incident but insofar as FIR is concerned, complainant has not stated or attributed any role to the Applicant. The fairness with which Mr. Kulkarni has argued the present Application is appreciated by the Court.

8. I have considered the rival submissions made by learned Advocates for the parties and perused the record of the case.

9. Considering the no specific role is attributed to the Applicant before me which is emanating from the 5 witness statements placed on record as delineated herein above and no specific role attributed to present Applicant in the FIR either filed by the first informant, case of Applicant deserves to be considered. Applicant is arrested on 27.05.2023. Case of prosecution is that there are direct eye witness

who witnessed the crime in question. However, all those 5 eye-witnesses have recorded their statements and they do not attribute any specific role to Applicant neither his presence is also seen at the scene of the crime at the time of its occurrence. These *prima facie* observations and findings emanating from the prosecution case itself therefore entitle the Applicant to be released on bail. Needless to state that complicity of the Applicant can be proved by the prosecution at the time of trial. Hence, Bail Application No. 2491/24 is allowed 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) 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 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. 2491/24 is allowed and disposed.
12. Bail Application No. 476/25 is adjourned to **2nd May, 2025.**

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[MILIND N. JADHAV, J.]

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by RAVINDRA
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