



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO. 1236 OF 2024

Mohammad Imran @ Munda Mohd. Israr Vs State of Maharashtra

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. S.V. Sirpurkar, counsel for applicant.

Mr. D.V. Chauhan, Senior Counsel with Mr. N.B. Jawade, APP for non-applicant/
State.

CORAM : **URMILA JOSHI-PHALKE, J.**
DATE OF RESERVE : **12/03/2025.**
DATE OF DECISION : **20/03/2025**

1. The applicant came to be arrested on 05/07/2023 in connection with Crime No. 152/2023 registered with Police Station Old City, Akola, Tq. and District Akola for the offence punishable under Sections 143, 147, 148, 201, 302 read with Section 149 of the Indian Penal Code, 1860.

2. The accusation against the present applicant is on the basis of a report lodged by Mohan Kisan Gandwale alleging that the deceased had attended work and not returned from work and, therefore, his family members were searching for him, but they could not traced him due to violence in the city on the said night. On the next morning, it was revealed that the deceased was murdered during the riot. Initially, the First Information Report came to be lodged against the unknown persons.

During the investigation, the name of the present applicant is revealed. On the basis of the statements of the eyewitnesses, the applicant is arrested. It was revealed during the investigation that the investigating officer had received the secret information as well as the call location of the present applicant, from which the involvement of the present applicant was revealed, and he was arrested. From the spot of the incident, weapons like iron rods, knife, sticks, and stones were recovered. On the basis of the same, the crime is registered against the present applicant.

3. Heard learned counsel Shri S.V. Sirpurkar for the applicant, he submitted that the initial bail application of the present applicant bearing Criminal Application (BA) No. 872/2023 is rejected on 16/10/2023, as there is a change in circumstances, as the other co-accused with the similar allegation is already released on bail, and therefore, the applicant also makes out a case for his release.

4. Learned counsel for the applicant submitted that other co-accused Saddamoddin Muniroddin Inamdar and Mohd. Shafi @ Pappu Rafique are released on bail by this Court. Thus, the ground of parity is also available to the present applicant. He submitted that, as far as the role of the present applicant is concerned, a general allegation is levelled against him. The injuries which are mentioned in the post mortem report are not attributed to the present applicant. He further submitted that, considering the

allegation against the present applicant and the general statement made against him, he deserves to be released on bail.

5. Learned APP strongly opposed the said application and submitted that there is no change in circumstance as far as the present applicant is concerned. His first bail application is rejected by the Co-ordinate Bench of this Court, considering the evidence against him.

He further submitted that the ground of parity is not available to the present applicant, as the role attached to the present applicant is completely different. He further submitted that, as far as the successive bail applications are concerned, which are to be filed only under the change in circumstance, without change in circumstance, the second bail application would be deemed to be seeking review of the earlier judgment, which is not permissible under the criminal law.

6. As far as the merit of the matter is concerned, he invited my attention towards the statement of the eyewitness and submitted that the role attributed to the present applicant and other co-accused, i.e. Saddamoddin Muniroddin Inamdar and Mohd. Shafi @ Pappu Rafique, is not the same. The role attributed to the present applicant as per the statement of the eyewitness is concerned, which attributes the similar role as the co-accused who is released on bail, but the CCTV footage panchanama shows

differently. The CCTV footage panchanama shows the presence of the present applicant at the spot of the incident. Whereas the accused, who is released on bail, whose presence is not witnessed in the CCTV footage. Thus, considering the role attributed to the present applicant and his presence at the spot of the incident, which reveals from the CCTV footage panchanama, the ground of parity is not available to him, and hence the application deserves to be rejected.

7. He further invited my attention towards the statement of Amol Ajabrao Unhale, who attributes the specific role to the present applicant as far as assaulting the deceased by means of stone is concerned. The names of the other co-accused, who are released on bail, are not mentioned in the said statement of Amol Ajabrao Unhale. Thus, the role attributed to the present applicant and other co-accused who are released on bail is not similar, and therefore, the ground of parity is not available.

8. Learned counsel, Mr. S.V. Sirpurkar for the applicant, placed his written submissions on record, and he submitted that the order dated 01/10/2023 passed by this Court granting bail to the co-accused observing the fact that there is one eyewitness who stated his role of assaulting the deceased by means of stone. Whereas there was no recovery from the accused, and there is no stain on the clothes of the accused persons. The applicant is named by the other co-accused, and the three eyewitness

statements were recorded after a delay of 12 days. While considering the bail application on the ground of parity, accused persons having a similar role must be governed by the principle of parity. That means the criminal Court should decide like cases alike, and hence, a similar view must be taken in the present case. He submitted that the bail application on change in circumstance is maintainable.

9. In support of his contention, he placed reliance on following decisions;

- a] **Sheikh Javed s/o Sheikh Munawar Vs State of Maharashtra in Criminal Application (BA) No. 237/2024 dated 29/07/2024.**
- b] **Javed Shaukat Ali Qureshi Vs State of Gujarat [(2023) 9 SCC 164]**
- c] **Babu Singh and others Vs State of U.P [(1978) 1 SCC 579]**
- d] **The decision of Principal Seat in the case of Durgesh Vilas Patil Vs State of Maharashtra and another with connected appeals [Criminal Appeal No. 74/2019 with Criminal Appeal 113/2019] decided 02/05/2019].**

10. Per contra, learned APP placed reliance of this Court in the case of *Virendra vs State of Maharashtra, through Police Station Officer and another [2024 SCC*

***OnLine Bom 2749]* and *Adarsha Vs State of Maharashtra [2024 SCC Online Bom 3158]*.**

11. On perusal of the entire evidence on record, it reveals that the First Information Report is lodged against the unknown persons. During the investigation, the investigating officer visited the alleged spot of the incident, drew the spot panchanama, and seized the weapons, like stones, from the spot of the incident. It was revealed during the investigation that the mob of people from the Muslim community gathered together, and the deceased, who was proceeding from the said role, was eliminated by the said mob during the riot. During the investigation, the memorandum statements of the co-accused Mohd. Shafi @ Pappu Rafique and Shaikh Javed @ Shaikh Munawar, Abdul Shakil @ Shakil Budha are recorded, and at their instance, the weapons are recovered. During the investigation, the investigating officer also collected the CCTV footage from the CCTV installed at the Old City Police Station, Akola, from which it reveals that the group of Muslim community people proceeded from Gangadhar Square and Killa Square. The other CCTV footage panchanama shows the presence of the present applicant along with the other co-accused at the spot of the incident, and he was identified by the witnesses after witnessing the same CCTV footage. Thus, the presence of the present applicant was witnessed in the CCTV footage.

12. During the investigation, the various articles are also seized by the investigating officer, including the clothes of the accused persons, and the statements of the eyewitnesses are also recorded. The statement of the eyewitness Amol Ajabrao Kale shows the presence of the present applicant at the spot of the incident assaulting the deceased by means of a stone. As far as the ground of parity is concerned, it is settled law that while considering the parity, the Court must focus on the role of the accused and not only on the weapons carried out by the accused. Merely observing that another accused, who was granted bail, was armed with a similar weapon is not sufficient to determine whether the case for the grant of bail on the basis of parity has been established. In deciding the aspect of parity, the role attached to the accused, their position in relation to the incident, and the victim is of utmost importance.

13. The Hon'ble Apex Court in the case of ***Tarun Kumar Vs Assistant Director Directorate Of Enforcement [2023 SCC Online SC 1486]*** and observed that parity is not law. While applying the principle of parity, the Court is required to focus upon role attached to the accused, whose application under consideration. It is further observed that it is axiomatic that the principle of parity is based on the guarantee of the positive equality before law enshrined in Article 14 of the Constitution. However, if any illegality or irregularity has been committed in favour

of any individual or group of individuals, or a wrong order has been passed by judicial forum, others cannot invoke the jurisdiction of the Higher and Superior Court for repeating or multiplying the same irregularities or illegality or for passing similar wrong order. Article 14 is not meant to perpetuate the illegality or irregularity. If there has been a benefit or advantage conferred on one or a set of people by any authority or by the Court without legal basis or justification, other persons could not claim as a matter of right, the benefit on the basis of wrong decision.

14. The Hon'ble Apex Court in ***Kalyan Chandra Sarkar vs Rajesh Ranjan @ Pappu Yadav [(2005) 2SCC 42]***, observed that principles of res-judicata and such analogous principles although are not applicable in a criminal proceedings, still the Courts are bound by the doctrine of judicial discipline having regard to the hierarchical system prevailing in our country. The findings of a Higher Court or a co-ordinate bench must received serious considerations at the hands of the Court entertaining a bail application at a later stage, when the same had been rejected earlier. In such an event, the courts must give due weight to the grounds which weighed with the formal or higher court in rejecting the bail application. Ordinarily, the issues which had been canvassed earlier would not be permitted to re-agitated on the same grounds, as the same would lead to

speculation and uncertainty in the administration of justice and may lead to forum hunting.

15. In the case of ***State of Tamil Nadu Vs S.A. Raja [2005 (8) SCC 380]***, wherein the Hon'ble Apex Court observed that when learned Single Judge of the same Court had denied bail to the respondent for certain reasons and that order was unsuccessfully challenged before the appellate forum, without there being any major change of circumstances, another fresh application should not have been dealt with within a short span of time unless there were valid grounds giving rise to a tenable case for bail. Of course, the principles of res judicata are not applicable to bail applications, but the repeated filing of the bail applications without there being any change of circumstances would lead to bad precedents.

16. In the case of State of ***M.P Vs Kajad [2001 (7) SCC 673]*** also the Hon'ble Apex Court made the similar observation that it is true that successive bail applications are permissible under the changed circumstances. But without the change in the circumstances the second application would be deemed to be seeking review of the earlier judgment which is not permissible under criminal law as has been held by this Court in ***Hari Singh Mann v. Harbhajan Singh Bajwa & Anr. [2001 (1) SCC 169]*** and various other judgments.

17. In the light of the above observations if the submission of the learned counsel for the applicant is taken into consideration as far as the decision of ***Javed Shaukat Ali Qureshi vs The State Of Gujarat [2023 9 SCC 164]*** is concerned, the observations of the Hon'ble Apex Court as to unlawful assembly is after full fledged trial.

18. In the case of ***Babu Singh and others Vs State of U.P [(1978) 1 SCC 579]*** the legal position that an order refusing an application for bail does not necessarily preclude another on a later occasion giving more materials, further developments and different considerations is not disputed. As far as the observation of the Division Bench in the case of ***Durgesh Vilas Patil*** referred (supra) is not helpful to the present applicant, as the facts are not identical.

19. Coming to the facts of the present case, the earlier bail application of the present applicant is rejected by the Coordinate Bench, by observing that the accused persons formed an unlawful assembly because of the rumor of the objectionable social media post, and without verifying the facts, they have committed an offence of riot, and therefore, considering the statement of the witnesses, the bail application was rejected.

20. The other Criminal Application (BA) No. 233 of 2024 and Criminal Application (BA) No. 571 of 2024 are considered by this Court as rejection of these

applications of the present applicant was not brought to the notice of this Court when these bail applications were considered.

21. Moreover, while considering the bail application of the co-accused, it is specifically observed by this Court that the statements of the eyewitnesses show that the co-accused have assaulted the deceased by means of stone. It is the general allegations levelled against one of the accused, Saddamoddin, and therefore, his application for bail was considered. As far as the present applicant is concerned, it is admittedly stated that, apart from the statement of the eyewitness, which was allegedly recorded 12 days after the incident, and there is additional evidence. Specifically, the applicant was reportedly seen in CCTV footage at the scene of the incident, which distinguishes this case from others.

22. As observed earlier, while considering the ground of parity and while granting the bail, the Court must focus on the role of the accused and not only on the weapon carried out by the accused. It is to be considered that another accused, who was granted bail and was armed with a similar weapon, is not only the consideration to determine whether a case for a grant of bail on the basis of parity has been established. In deciding the aspect of parity, the role attached to the accused, their position in relation to the incident, and the evidence against the said accused are of utmost

importance. As far as the parity is concerned, the entire incident shows that due to the post on social media, one rumor was spread, and the applicant and other co-accused formed the unlawful assembly, and the death of the deceased was caused. As far as the statements of the eyewitnesses, which implicate the other co-accused, who are released on bail, namely Saddamoddin Muniroddin Inamdar and Mohd. Shafi Alias Pappur Rafique, they are recorded after 12 days of the incident. Besides the said statement, the CCTV footage nowhere shows their presence, and therefore, their application was considered.

23. As far as the present applicant is concerned, besides the statement of this eyewitness, the CCTV footage shows the presence of the present applicant at the spot of the incident, which distinguishes his case, and therefore, the ground of parity is not available to the present applicant. As observed earlier, the initial bail application of the present applicant is rejected. While considering the bail application of the other co-accused who are released on bail, this fact is not brought to the notice of this Court. It was also not brought to the notice of this Court that the present applicant had filed an application, and the same was rejected by the Coordinate Bench, and therefore, there was no consideration to the observation made by the earlier Bench. On this ground also, the ground of parity is not available to the present applicant.

24. In the facts and circumstances of this case, application of the present applicant deserves to be rejected, as the earlier bail application was rejected considering the merit of the matter, and there is no such change in circumstance. In view of that, I proceed to pass the following order.

a] The criminal application is **rejected**.

[URMILA JOSHI-PHALKE, J.]