

MHAH010036962023



Special Case No. 225/2023
(State of Maharashtra Vs. Jakir Mahammad
Ali Tamboli and others)

ORDER BELOW EXH.68
(Passed on 14/03/2024)

This is bail application under Section 439 of Criminal Procedure Code by the Applicant/Accused no.16 Altamash Ashpak Shaikh seeking his release on bail in respect of Crime No. 241/2023 under Section 307, 323, 324, 120(B), 143, 147, 148, 149, 323, 109 of IPC and Section 4/25 of Arms Act registered at Tophkhana Police Station, Ahmednagar. The Applicant/Accused no.16 was arrested on 27/01/2024 and after sufficient period of PCR was taken into Magisterial Custody on 28/01/2024 and since then he is in Jail.

2] The prosecution story is as under :-

The informant who is the injured, while taking treatment in Mac-Care Hospital, Ahmednagar, lodged the complaint about assault caused to him by the Applicant/Accused and other accused, of whom some were arrested and some are still absconding.

3] That on 27.02.2023, the informant along with his friend Bunty Dhapse was going towards Ramwadi from Tarakpur Bus Stand road on his two-wheeler. As they came near petrol pump, they saw mob of people and they stopped. The Accused No.2 Nasir came towards them while talking on his mobile phone along with

25-30 people along with him and said this is the person offering sacred cloth “चादर चढाणेवाला”.

4] He then threatened Bunty Dhapse to go away. He gave his mobile phone to informant and asked him to talk with Afzal Bhai. The informant denied. Then Accused No.2 Nasir gave a call to other persons that Shaheban Jahagirdar has asked to kill the informant and thus Accused No.2 Nasir and other persons accompanying him assaulted him with deadly and dangerous weapons. Due to the assault, the informant has sustained grievous injuries. He was then taken to hospital by Akshay Kenjarla and his friend.

5] It is contended by the Applicant/Accused no.16 that only role attributed to him as shown in the charge-sheet is that he assaulted the informant by wooden stick on his head and apart from this there is no overt act connected to him. The informant has not sustained any grievous injury and was discharge from hospital immediately and now he is fit and fine, which shows that he has not sustained any serious injury. All other co-accused mentioned in the charge-sheet have already been released on anticipatory bail and/or regular bail by Hon'ble High Court and the District Court and thus, ground of parity is applicable to him.

6] It is further stated that, the offence is old one and entire investigation is completed for which charge-sheet has been filed, thus, his custodial interrogation is not warranted. There is no

further recovery or discovery at his instance, which shows that, Applicant is falsely implicated. The informant has not sustained any injury on vital part of his body, due to alleged assault by the Applicant/Accused. There is no intention or motive on his part to commit any such crime and there is no enmity between them.

7] The present Applicant/Accused is permanent resident of given address and there is no likelihood of his absconding. He is ready and willing to abide by conditions imposed on him and furnish surety. He undertakes to co-operate investigation machinery and remain present as and when required. He will not tamper the evidence nor misuse the liberty. Hence requests for release on bail.

8] The APP has filed Say at Exh.70 for application Exh.68 reiterating the story of FIR strongly opposing the relief sought by the Applicant/Accused on the ground that the Applicant/Accused has committed serious offence attempting to kill the informant by assaulting him with wooden log and chopper, due to which he sustained serious injury. The Applicant/Accused along with co-accused persons attempted to cause the murder of informant endangered his life by assaulting him with dangerous weapon.

9] This is second bail application on behalf of Accused and his previous bail application bearing C.M.A.(Bail) No. 581/2023 was rejected by this Court on merits. Hence this application is not tenable.

10] The present Applicant/Accused remained abscond for long time since the commission of crime and weapon used by him is not yet recovered. If he is enlarged on bail, he will not attend the trial which will cause the hurdle. He may threatened the witnesses from deposing the truth before the Court and there is possibility of committing more serious offence. If he is released on bail, he will help the other co-accused to remain abscond and hence his application be rejected.

11] Following points arise for determination and I record the findings against each of them for the reasons given below.

<u>No.</u>	<u>Points</u>	<u>Findings</u>
1	Whether the Applicant/Accused No. 16 is entitled to be released on bail ?	In the Negative.
2	What order ?	As per final order.

REASONS

As To Point No.1 :-

12] Heard the Advocate for the Applicants/Accused and the APP. Perused the charge-sheet. In the application Exh. 68 the Advocate has mentioned the Applicant/Accused at sr. no.15. However, he filed the pursis Exh. 71 that this application is filed for the Accused namely Altamash Ashpak Shaikh, who is arrayed as Accused no.16 in the charge-sheet. Thus, this application is taken for Accused no. 16 Altamash Ashpak Shaikh.

13] The record shows that, after the incident the Applicant/Accused has applied for pre-arrest bail by filing an application under Section 438 of Cr.P.C. vide Criminal Bail Application No. 581/2023. Initially he was granted ad-interim protection by order dtd. 20/04/2023, but at the final stage, the application was rejected by order dtd. 21/06/2023. Being aggrieved by said order the Applicant/Accused moved the Hon'ble High Court (Aurangabad bench) seeking relief vide Anticipatory Bail Application No. 1472/2023, but withdrew the same on 16/01/2024.

14] It is contended on behalf of the Applicant/Accused that, there are in all 22 Accused in the matter wherein most of them have been released on bail. Some of the Accused are granted benefit of pre-arrest bail. As of now the informant is in good health and there is no danger to his life. The allegation against the present Applicant/Accused is only that, he has assaulted the informant by wooden log on his head, which is contusion in nature. There was no wound injury to him nor the injury was bleeding and thus there is no danger to his life. It is stated that, the blunt trauma or contusion cannot cause any danger to the life and as many other Accused persons have been released on bail, on the ground of parity, this Accused be released. He further contended that, his application before Hon'ble High Court was not decided on merits as he has withdrawn the same.

15] The APP contended that the informant has narrated

specific role of this Applicant/Accused. As he was apprehending the arrest, he has applied for pre-arrest bail, but though he was granted interim protection, the application was rejected at final stage. The Applicant/Accused has approach the Hon'ble High Court on rejection of his pre-arrest bail, but no relief was granted to him. Hence he was absconding since then and was arrested on 27/01/2024. It is further stated that, as the Applicant/Accused is involved in creating situation of law and order and disturbance between the two different communities, if now released on bail, there is every possibility of quarrel and communal disturbance between two different communities and the situation of controlling the law and order for the mob. As charge-sheet has been filed on completion of investigation, the prosecution is ready for trial, hence the application be rejected.

16] Perused the charge-sheet. It is filed on 22/05/2023 and the case is committed to Sessions Court on 19/06/2023. This Applicant/Accused no.16 was arrested on 27/01/2024 and was taken into Magisterial custody on 28/01/2024. The incident occurred on 27/02/2023, wherein the informant Kunal Sunil Bhandari was attacked by Accused no. 1 to 6 along with 20-25 persons. He was seriously injured and was admitted in Mac Care Hospital on 27/02/2023, where he remained as indoor patient till his discharged on 04/03/2023.

17] The informant on 16/03/2023 gave additional statement naming the present Applicant/Accused that, in order to

cause his murder the Applicant/Accused has assaulted him with wooden stick with his head. On perusal the medical documents placed on record along with charge-sheet, the progress sheet of Mac Care Super-speciality Hospital shows “contusion over right fronto-temporal region of head over an area of size 7cm x 6cm swelling & tenderness present, redness seen”. Thus, it is seen that the contusion of a big size 7cm x 6cm is on head which is vital part of the body. In general parlance, any injury on such vital part of body is serious injury.

18] On perusing the statement of witness Bunty Machhindra Sabale, he stated that, he has seen the Applicant/Accused assaulting the informant with the help of wooden log. Moreover, the panchanama of securing CCTV footage file, recorded on 13/03/2023, the present Applicant/Accused is seen. The said CCTV footage when run in presence of panchas and the informant, the informant has identified the present Applicant/Accused. The panchanama specifically mentioned that, at the time 02:23:23 to 02:23:26, the Applicant donned in black Pathani dress with slippers in his legs is assaulting the informant in the mob.

19] The informant has specifically identified the Applicant/Accused in the said CCTV footage. Thus, specific role of Applicant/Accused is seen in assaulting the informant and causing him serious injuries for which informant was required to be admitted in hospital for about 05 days. It is contended on behalf of the Applicant/Accused that the informant at the hospital has given

the history of assault only by knife. He has not mentioned any assault by stick and thus there is no role of present Applicant/Accused. However, the medical papers shows contusion over right fronto-temporal region of head in size of 7cm x 6cm. Though it is contended on behalf of Applicant/Accused that, this injury cannot be said as fatal to the life of the informant, it is to be hereby stated that, the injury is on the vital part of the body. Moreover, the informant has identified the Applicant/Accused in CCTV footage where his overt act is seen. In this context, I do not find any good ground to released the Accused on bail and hence I proceed to pass following order :

: ORDER :

1. The application Exh.68 is rejected.
2. Matter to proceed further.

Date : 14/03/2024

(Mrs. S. V. Sahare)
Additional Sessions Judge,
Court No.3, Ahmednagar.