

MHNS010000302022



CRIMINAL BAIL APPLICATION NO.9/2022

Santosh Shamrao Pawar ... Applicant

V/s.

State of Maharashtra
Through P.I. Wavi Police Station,
in C.R. no.331 of 2021 ...Respondent

ORDER ON BAIL APPLICATION

1. The applicant accused Santosh Shamrao Pawar has filed this application for grant of bail U/s.439 of the Cr.P.C. in Crime No.331/2021 of Wavi Police Station for the offence punishable U/s. 307 r.w. 34 of the Indian Penal Code.

2. The case of the prosecution is that applicant/accused is husband of injured Komal and due to strained marital relations between them, Komal was residing at her brother's house prior to two months of the date of incident. That on 22/09/2021 at about 9.15 a.m. in the house of informant Rekha Shinde at Nandur Shingote Tal. Sinnar, Dist. Nashik, the incident took place. At that time, the informant Rekha Shinde was sitting in her house on sofa set alongwith her husband and his sister Komal Santosh Pawar, at that time applicant/accused entered from the open back door of said house and by wishing 'happy birthday, happy birthday' to his wife Komal, the applicant/accused pulled out one knife from his pocket and stabbed in the stomach of Komal for 2/3 times by said knife. Injured Komal raised shouts. At that time informant Rekha and his husband

Savliam who were present in the said house, tried to caught hold the applicant/accused. After the said incident injured Komal fell down outside the house and applicant/accused ran away from the back door of the house. During the said incident, informant Rekha also sustained injury on her hand. Thereafter Rekha lodged report of the said incident.

3. The applicant/accused has filed this application on the ground that investigation in this crime is completed and charge-sheet is filed before the court. Moreover, he is falsely implicated in this crime. Also at present, the injured Komal who is the wife of the applicant/accused does not have any grievance against him and she has executed affidavit dated 16/11/2021 alleging that she has no objection to grant bail to her husband as the matter between them is settled. So considering the same and the fact that applicant/accused is not a habitual offender, it is prayed that he be released on bail.

4. The Ld. APP and I.O have contested this application by filing their pursis and say vide Exh.4 and 5 respectively. It is alleged that the offence charged is serious in nature. There is matrimonial dispute between applicant/accused and injured Komal. If the applicant/accused is released on bail, he may commit similar offence by visiting at the house at Nandur Shingote where his wife resides. The injured is residing at Nandur Shingote after discharge from the Civil Hospital. Applicant/accused may pressurize the injured and prime witnesses in this case. Hence, it is prayed that bail may not be granted to him.

5. Heard Ld. Adv. Mr. Rajesh Avhad and Ld. A.P.P. Mrs. Patil. They have submitted as per the line of their respective contentions. It is argued by the Advocate for applicant/accused that the matter is compromised between the applicant/accused and his injured wife. So considering the affidavit of his wife, bail be granted to accused. He also

argued that there is delay in lodging the FIR. Also MLC does not show serious injuries caused to the wife of applicant/accused. Also investigation is completed as chargesheet is submitted. Hence, he argued that applicant/accused be released on bail.

6. Per contra, the Ld. APP argued that the offence is serious in nature. Moreover, from the FIR it can be seen that applicant/accused has committed the offence in presence of informant and her husband in their house. So there is every possibility that, if applicant/accused is released on bail he might commit similar offence. Also as the offence is non-compoundable filing of affidavit by the wife of applicant/accused cannot be considered as a ground to release him on bail. So she argued that application be rejected.

7. Considered the arguments. Gone through the contentions. The FIR is admittedly lodged by Rekha who is the sister in law of the injured Komal and who is also injured, as well as the eye witness of the incident. In the FIR she has stated that the applicant/accused has assaulted her sister in law Komal by knife and have stabbed her 2-3 times in her stomach. She was also injured in the said incident. The charge-sheet is before the court and so prima facie, from the police papers the involvement of the accused in the crime can be seen.

8. The Ld. Advocate applicant/accused has argued that this is the third bail application of applicant/accused. However, the earlier applications were filed prior to the filing of charge-sheet and so after charge-sheet this application is filed. But on this point the petition is silent. However, in this context, the applicant/accused must show that there is change in any circumstances for filing this successive bail application. In this context, it is essential to note that as per the law settled on this point, the change in circumstance must be such that it should persuade the court to take a view different from the one taken in the earlier bail application. The applicant/accused must show that there

is substantive change in the erstwhile circumstance and that the change is such which could impact on the previous order of rejection of bail.

9. In this context, it is also settled law that once a bail application is rejected and a subsequent bail application is filed, the same can be considered only if there is substantial change in the circumstances after the rejection of the earlier bail order. An earlier order of bail cannot be virtually overruled without their being a change in the 'fact situation'. However, the present application is totally silent regarding any change of circumstance that has occurred after the rejection of the earlier bail application. But it appears that according to the applicant/accused as the injured, who is his wife, has given affidavit stating that she has no objection to allow this application as the matter is settled between them. So on this sole ground this successive bail application is filed.

10. The injured who is the wife of the applicant/accused has filed her affidavit on record. However, at this stage the said affidavit cannot be considered and on the basis of the same the gravity of the offence cannot be reduced. On the contrary, considering the same it can be regarded as an instance of pressurizing of the witnesses/injured because of their relationship. Also possibility of tampering of the evidence as contemplated by the prosecution cannot be ruled out. Whereas, filing of the affidavit, cannot be considered as a substantive change in the circumstance after the rejection of earlier bail applications. Hence, for the aforesaid reason discretion cannot be used for interfering with the view taken by the Court while rejecting the earlier bail applications. So this successive bail application cannot be considered.

11. The Ld. for applicant/accused in support of this application has relied on the case law **Anjusingh Pramodsingh Rajput V/s. State of Maharashtra LAWS (Bom) 2009-1-119.**

12. Gone through the case law. In this case law, the complainant was the wife of the accused, who has lodged FIR under Section 307 of I.P.C. against her husband. However, later on, as the matter was compromised between the parties so they had filed proceeding before the Hon'ble High Court for quashing the FIR. In the said matter the Hon'ble High Court considering the fact that the complainant and accused are husband and wife and as the matter is settled between them. So for their future life the FIR was quashed. However, in the present case the matter for consideration is for bail of the accused. So this case law is not helpful to the applicant/accused to support the present bail application.

13. In view of above discussion it has come on record that there is prima facie sufficient material to infer direct involvement of the accused in the present offence. It has also come on record that the offence is committed due to the strained matrimonial relations between the parties. So the apprehension of the Ld. APP is justified that if accused is released on bail, he might pressurize the witnesses and threatened them. The offence charged against accused is serious in nature. Also for the aforesaid reasons this being successive bail application filed without any substantial change in circumstance, I am not inclined to allow the same. Hence, for the aforesaid reasons I proceed to pass following order.

ORDER

Application is rejected.

(Dictated and pronounced in open court)

Date: 29/01/2022
Nashik

(Smt. R.M. Shinde)
Additional Sessions Judge,
Nashik.