

Abhishek Balu Sasane @ Abhishek Manoj ... vs The State Of Maharashtra on 13 March, 2024

Author: Madhav J. Jamdar

Bench: Madhav J. Jamdar

2024:BHC-AS:12222

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 2277 OF 2023

Abhishekh Balu Sasane alias Abhishek ...Applicant
Manoj Patil alias Bhaiyya

Versus

The State of Maharashtra ...Respondent

Mr. Shailesh Kharat, Advocate, for the Applicant.
Mr. P.H. Gaikwad, APP, for Respondent-State.

CORAM : MADHAV J. JAMDAR, J.
DATED : 13th March 2024

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1. Heard Mr. Kharat, learned Counsel for the Applicant and Mr. Gaikwad, learned APP for the Respondent-State.

2. This regular Bail Application is preferred under Section 43 of the Code of Criminal Procedure, 1973 ("Cr.PC."). The relevant details are as follows:-

| | |
|-----------------------------------|---|
| 1. C. R. No. | 30 of 2022 |
| 2. Date of registration of F.I.R. | 6th March 2022 |
| 3. Name of Police Station | Faraskhana, District-Pune |
| 4. Section/s invoked | 397 r/w 34 of of I.P.C., 184(25)(27)(35) of Arms Act and 37(1) r/w 135 of Maharashtra |

Police Act.

5. Date of incident

6th March 2022

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6. Date of arrest 9th March 2022

7. Date of filing of Charge-sheet 7th June 2022

3. There are four accused persons, two of whom are juveniles. As per the prosecution case, the complainant travelled in an Auto-rickshaw alongwith his friend Sarthak Malkhede and unknown persons i.e. the Accused. The complainant wanted to go to Sangamwadi, Pune, however, after reaching at Sancheti Hospital Chowk instead of going towards Sangamwadi, the Auto-rickshaw driver i.e. the present Applicant took Auto-rickshaw under the bridge towards Mangalwar Peth. At that time, the complainant confronted him and two people sitting in the rear threatened the complainant and Sarthak and demanded the mobile phone and money from them. At the threat of knife, they took away mobile phones and 500/- each from them and also transferred Rs.18,000/- from the PhonePe App from the mobile of the complainant and Rs.2,000/- from PhonePe account of his friend-Sarthak.

4. Mr. Kharat, learned Counsel for the Applicant submitted that the Applicant was apprehended on 9th March 2022 and the Charge-sheet has been filed on 7th June 2022 and the Applicant is in custody for more than 2 years and there is no progress in the trial. He submitted

that even though the Accused were not knowing the complainant and his friend, yet the test identification parade was not conducted. He

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submitted that although it is the case of the prosecution that the Applicant has been arrested on the basis of CCTV footage, the said panchanama is not part of the Charge-sheet. He submitted that although there are antecedents, he has been granted bail in one case and another case has resulted in an acquittal. He submitted that as far as the antecedents are concerned, either the cases were registered after the Applicant was arrested in this case or in the already registered cases against unknown persons, he has been shown as an Accused.

5. On the other hand, Mr. Gaikwad, learned APP vehemently opposed the Bail Application and pointed out various averments in the Affidavit of Santosh Pandharinath Shinde, Assistant Police Inspector, Faraskhana Police Station, Pune City. He submitted that there are total 5 cases registered against the Applicant. He submitted that there is evidence in the nature of CDR/SDR of mobile of the Applicant. He submitted that as far as C.R. No.59 of 2022 is concerned, the Auto-rickshaw which is stolen and the subject matter of the C.R. is recovered at the instance of the present Applicant. He submitted that it is the modus operandi of the Applicant to attack the persons travelling in an Auto-rickshaw and commit robbery. He therefore submitted that the Bail Application be rejected.

6. Perusal of the record shows that the incident in question took

place on 6th March 2022, offence was registered on 6 th March 2022, the

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Applicant was arrested on 9th March 2022. The investigation is complete and the Charge-sheet is filed on 7 th June 2022 and till date there is no progress in the trial.

7. As per the prosecution case, there are 14 witnesses proposed to be examined by the prosecution. Accordingly, the trial is likely to take a considerably long time.

8. As far as the antecedents are concerned, the details of the same are set out in paragraph 10 of the Affidavit-in-Reply filed on behalf of the State of Maharashtra. The said details are reproduced hereinbelow:

| Sr. No. | Police Station | C.R. No. | Sections |
|---------|----------------|----------|-----------------|
| 1 | Vishramwadi | 43/2022 | 307, 504 of IPC |
| 2 | Shivajinagar | 27/2022 | 392, 504 of IPC |
| 3 | Kothrud | 59/2022 | 379 of IPC |
| 4 | Yerwada | 96/2022 | 379 of IPC |
| 5 | Faraskhana | 30/2022 | 397, 34 of IPC |

9. As far as the antecedents are concerned in C.R. No. 43 of 2022, the Applicant has been granted bail by Order dated 15 th October 2022. As far as C.R. No. 27 of 2022 is concerned, the same is pending. As far as C.R. No.59 of 2022 is concerned, the same is pending before Lok Adalat and as far as the C.R. No.96 of 2022, the parties have settled the dispute and as the offence under Section 379 of Indian Penal Code, 1860 is compoundable, the Accused has been acquitted in that case as per Section 320(8) of Cr.PC..

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10. Prima facie, there is substance in the contention of learned Counsel for the Applicant that the test identification parade is not conducted and although the learned Sessions Judge has made reference to the CCTV footage, the panchanama to that effect is not annexed to the Charge-sheet. In any case the Applicant is incarcerated since more than 2 years and there is no progress in the trial.

11. Mr. Kharat, learned Counsel appearing for the Applicant states that as several witnesses are residing in District-Pune, the Applicant will therefore not reside within District - Pune and that the Applicant will reside at District - Ahmednagar.

12. The Applicant does not appear to be at risk of flight.

13. Accordingly, the Applicant can be enlarged on bail by imposing conditions.

14. In view thereof, the following order:-

ORDER

(a) The Applicant - Abhishekh Balu Sasane alias Abhishekh Manoj Patil be released on bail in connection with C. R. No.30 of 2022 registered with the Faraskhana Police Station, District - Pune on his furnishing P. R. Bond of Rs.25,000/- with one or two local solvent sureties in the like amount, if not required in any other cases.

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(b) The Applicant shall not enter the Pune district after being released on bail, except for reporting to the Investigating Officer, if called, and for attending the trial.

(c) On being released on bail, the Applicant shall furnish his cell phone number and residential address to the Investigating Officer and shall keep the same updated, in case of any change thereto.

(d) The Applicant shall report to the Tofkhana Police Station, District - Ahmednagar twice a week, on every Sunday and Wednesday between 11.00 a.m. and 1.00 p.m. for six months and thereafter once a week on every Sunday between 11.00 a.m. and 1.00 p.m. The Police Inspector of Tofkhana Police Station, District-Pune to communicate details thereof to the Investigating Officer.

(e) The Applicant shall not directly or indirectly make any inducement, threat, or promise to any person acquainted with the facts of the case so as to dissuade such a person from disclosing the facts to the Court or to any Police personnel.

(f) The Applicant shall not tamper with the prosecution evidence and shall not contact or influence the Complainant or any prosecution witnesses in any manner.

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(g) The Applicant shall attend the trial regularly. The Applicant shall co-operate with the Trial Court and shall not seek unnecessary adjournments thereat.

(h) The Applicant shall surrender his passport, if any, to the Investigating Officer.

15. The Bail Application is disposed of accordingly.

16. It is clarified that the observations made herein are prima facie, and the Trial Court shall decide the case on its merits, uninfluenced by the observations made in this Order.

[MADHAV J. JAMDAR, J.]