



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 3276 OF 2024

Avinash Ajay Benewal

.. Applicant

Versus

The State of Maharashtra

.. Respondent

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- Mr. Ganesh Gole a/w. Mr. Ateet Shirodkar, Advocates for Applicant.
 - Ms. Mahalakshmi Ganapathy, APP for Respondent – State.
 - Ms. Priya Devidas Damale, Assistant Police Commissioner present.
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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 31, 2025.

JUDGEMENT:

1. Heard Mr. Gole, learned Advocate for Applicant and Ms. Ganapathy, learned APP for Respondent – State.

2. This is an Application under Section 439 of the Code of Criminal Procedure, 1973 seeking Regular Bail in connection with C.R.No.379 of 2023 registered with Naupada Police Station for the offences punishable under Section 394 read with 34 of the Indian Penal Code, 1860 (for short “**IPC**”); Section 142 of the Maharashtra Police Act, 1951 and Sections 3(1), (ii), 3(2) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (for short “**MCOC Act**”).

3. Applicant before me is arraigned as Accused No.3 in CR No.379 of 2023.

4. On the date of incident First Informant was walking from Thane Railway Station to Teen Hath Naka. As stated in the FIR, he was followed by 4 persons who after sometime intercepted and accosted him. He has stated that he was held by 3 persons and assaulted by a knuckle fighter on his body by one person following which his mobile phone and Rs.1800/- on his person were recovered and snatched by the persons who assaulted him. This incident occurred at 09:30 a.m. in the morning on a busy road junction near the traffic chowki of Teen Hath Naka. Due to the commotion and gathering of people the assailants ran away when the police patrolling van as also the traffic police van stationed nearby arrived on the incident spot. Applicant was one of the person who was running away who was nabbed by the police party.

5. Mr. Gole, learned Advocate for Applicant would draw my attention to the FIR and the contents of the FIR and persuade me to juxtapose the same with the statements of the two eye witnesses to the incident which are appended at page Nos.43 and 44 of the Application. The two witnesses in the present case are infact Traffic Police Constables who witnessed the incident as they arrived at the scene of crime. It is stated in their statement that they saw four persons

assaulting the First Informant. This dichotomy is noticed when the FIR copy is read. That apart, it is seen that 3 out of the 4 persons ran away from the incident spot whereas Applicant before me came to be apprehended by the Police Constables after a chase. Applicant has identified himself to be a student of Satish Pradhan Dnyanasadhana College, Thane studying in the Second Year Junior College (SYJC), Arts stream situated very close to the incident spot. His age was 18 years and 4 months at the time of his arrest. Two of the other accused are 26 years and 27 years old whereas third accused is 20 years old.

6. Ms. Ganapathy, learned APP has opposed the Application and would make the following submissions:-

6.1. She would submit that Applicant has recorded his confessional statement before the JMFC after being given 24 hours to do so after the incident. He volunteered to give his confessional statement and has specifically identified the 3 unknown persons who committed the crime alongwith him. She would therefore submit that the 3 unknown persons were known to the Applicant. She would submit that Accused No.1 namely Suresh @ Viki Pawar is the gang leader and he has serious antecedents registered against him.

6.2. She would submit that Applicant is a member of the gang led by Accused No.1 and therefore if he is enlarged on bail, there is no guarantee that he would not repeat the offence.

6.3. Finally she would submit that Applicant before me has been specifically identified in the TI parade by the First Informant as one of the assailant. On perusal of the statement which is appended at page No.26 of the Application it is *prima facie* seen that the 4 assailants have been specifically identified by their appearances by the First Informant. However, in the TI parade only Applicant before me and one other accused has been identified, whereas the other two have not been identified.

7. I have heard Mr. Gole, learned Advocate for Applicant and Ms. Ganapathy, learned APP for Respondent – State and with their able assistance perused the record of the case.

8. What impels me to pass the present order are two reasons, namely the fact that Applicant was 18 years and 4 months old at the time when he was apprehended and the second mitigating factor in the present case being that Applicant was a student of Satish Pradhan Dnyanasadhana College, Thane in the twelfth standard.

9. Mr. Gole has placed before me the mark-sheet issued by the college which is dated 25.04.2023. The said mark-sheet depicts that he has completed his FYJC in the year 2022 – 2023 and promoted to Class XIIth and from his confessional statement it is seen that he was a student of 12th standard (S.Y.J.C.). The incident occurred in December 2023 and since then Applicant is incarcerated for the past 1 year 1

month and 24 days.

10. One of the reason which strongly persuade me to consider grant of bail is the Applicant's age being 18 years and 4 months at the time of his arrest and on the count of education he should be given an opportunity by the Court to continue his education.

11. The Applicant is a young boy aged about 18 years, he has completed the First year of his junior college and was poised to appear for HSC examination the following year after the incident had he not been involved in the unsavory event. He has no antecedents. If the situation would be considered in a vacuum, the factors having a bearing in the Court's mind would be distinct from what it is now; this is because the Applicant is at the threshold of his adult life and halting his education at this stage and subjecting him to further custody would make it highly likely that he would be entangled in the vicious cycle and downward spiral of criminality making him a hardened criminal posing a future perpetual threat to the society. If he goes back to his books, it can reform him. Hence every semblance of a chance in this direction should be taken by the Court.

12. In this context, I would like to draw attention to the judgement of the Single Judge of the Delhi High Court in the case of *Siddharth Jain v. Shaheed Sukhdev College of Business Studies*¹. This

¹ 2015 SCC Online Del 1342

decision of the Single Judge of the Delhi High Court was comprehensively upheld by the Division Bench of the Delhi High Court by order dated 23.05.2016 reported in **2016 SCC OnLine Del 3438**. In that case before the Court, the Petitioner was a young adult approximately 20 years of age who faced an order of the Disciplinary Committee of his college having recommended him to be debarred for two years from entering the college premises, attending classes, from participation or representing the college on any of the activities or appear in university / college examinations due to serious misdemeanors. The Principal of the college reduced the period of debarment to 1 year. In this background the Petitioner approached the Court. While dealing with the said case and the Petitioner's misdemeanor, the Court while referring to the provisions of the Probation of Offenders Act, certain provisions of the IPC and certain decisions rendered by the Supreme Court held that the Court has very wide powers to deal with an offender who is under 21 years of age and if found guilty of having committed an offence.

13. Before me is the case of an undertrial, who is on the threshold of adulthood. In this context, the Delhi High Court extracted the observations of the Supreme Court in paragraphs Nos.4 and 7 of the judgement in the case of *Ishar Das v. State of Punjab*² which would read as under:-

² 1973 (2) SCC 65

“4. There is, in our opinion, considerable force in the stand taken on behalf of the appellant by his learned counsel and we find ourselves unable to accede the submission made on behalf of the respondent State. The Probation of Offenders Act received the assent of the President on May 16, 1958 and was published in the Gazette of India, dated May 19, 1958. According to sub section (3) of Section 1 of that Act, it shall come into force in a State on such date as the State Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different parts of the State. The fact that the Act was in force in the State of Punjab before the sample of ice cream was taken from the appellant has not been disputed before us. Section 3 of the Act gives power to the court to release certain offenders after admonition. According to that section, where any person is found guilty of having committed an offence punishable under Section 379 or Section 380 or Section 381 or Section 404 or Section 420 of the Penal Code, 1860 or any offence punishable with imprisonment for not more than two years, or with fine, or with both under the Penal Code, 1860 or any other law, and no previous conviction is proved against him and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient so to do, then notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under Section 4, release him after due admonition. The relevant part of sub-section (1) of Section 4 and sub-section (1) of Section 6 of the Act read as under:

“4. (1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour.

6. (1) When any person under twenty-one years of age is found guilty of having committed an offence punishable with imprisonment (but not with imprisonment for life), the court by which the person is found guilty shall not sentence him to imprisonment unless it is satisfied that, having regard to the circumstances of the case including

the nature of the offence and the character of the offender, it would not be desirable to deal with him under Section 3 or Section 4, and if the court passes any sentence of imprisonment on the offender, it shall record its reasons for doing so."

The Probation of Offenders Act, as observed, by Subba Rao, J. (as he then was) speaking for the majority in the case of Rattan Lal v. State of Punjab [AIR 1965 SC 444 : (1964) 7 SCR 676 : (1965) 1 SCJ 779 : (1965) 1 Cri LJ 360] is a milestone in the progress of the modern liberal trend of reform in the field of penology. It is the result of the recognition of the doctrine that the object of criminal law is more to reform the individual offender than to punish him. Broadly stated, the Act distinguishes offenders below 21 years of age and those above that age, and offenders who are guilty of having committed an offence punishable with death or imprisonment for life and those who are guilty of a lesser offence. While in the case of offenders who are above the age of 21 years absolute discretion is given to the court to release them after admonition or on probation of good conduct, subject to the conditions laid down in the appropriate provisions of the Act, in the case of offenders below the age of 21 years, an injunction is issued to the court not to sentence them to imprisonment unless it is satisfied that, having regard to the circumstances of the case, including the nature of the offence and the character of the offenders, it is not desirable to deal with them under Sections 3 and 4 of the Act.

7. The question which arises for determination is whether despite the fact that a minimum sentence of imprisonment for a term of six months and a fine of rupees one thousand has been prescribed by the legislature for a person found guilty of the offence under the Prevention of Food Adulteration Act, the court can resort to the provisions of the Probation of Offenders Act. In this respect we find that sub-section (1) of Section 4 of the Probation of Offenders Act contains the words "notwithstanding anything contained in law for the time being in force". The above non obstante clause points to the conclusions that the provisions of Section 4 of the Probation of Offenders Act would have overriding effect and shall prevail if the other conditions prescribed are fulfilled. Those conditions are: (1) the accused is found guilty of having committed an offence not punishable with death or imprisonment for life, (2) the court finding him guilty is of the opinion that having regard to the circumstances of the case, including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct and (3) the accused in such an event enters into a bond with or without sureties to appear and receive sentence when called upon during such period not exceeding three years as the court may direct and, in the

meantime, to keep the peace and be of good behaviour. Sub-section (1) of Section 6 of the abovementioned Act, as stated earlier, imposes a duty upon the court when it finds a person under 21 years of age, guilty of an offence punishable with imprisonment other than imprisonment for life, not to sentence him to imprisonment unless the court is satisfied that, having regard to the circumstances of the case, including the nature of the offence and the character of the offender, it would not be desirable to deal with him under Section 3 or 4 of the Act but to award a sentence of imprisonment to him. The underlying object of the above provisions obviously is that an accused person should be given a chance of reformation which he would lose in case he is incarcerated in prison and associates with hardened criminals. So far as persons who are less than 21 years of age are concerned, special provisions have been enacted to prevent their confinement in jail at young age with a view to obviate the possibility of their being subjected to the pernicious influence of hardened criminals. It has accordingly been enacted that in the case of a person who is less than 21 years of age and is convicted for an offence not punishable with imprisonment for life. He shall not be sentenced to imprisonment unless there exist reasons which justify such a course. Such reasons have to be recorded in writing.

14. The Court held that the rationale behind a different regime being followed world over *vis-a-vis* young offenders is to prevent recidivism which can be prevented if young offenders are dealt with appropriately with due sensitivity at an early age. Court also referred to a range of different sentences qua young offenders depending upon gravity of offences and age of offenders. The Court held that while dealing with a young offender, every attempt should be made to ascertain whether the sentencing disposition could be tailored as long as it is consistent with other sentencing principles so as to promote reformation and lead to rehabilitation of the offender. The Court referred to the facet of the doctrine of proportionality often used by our Courts in such matters.

15. Before me is the case of a young offender and as held above his exclusion from the normal educational stream for a period of time brings about unpleasant consequences and harm which in any case amongst others is the purpose of any punishment. Undoubtedly in the present case, the Applicant before me has admitted this act as seen from the confessional statement. At this stage, I am not considering its evidentiary value. The confessional statement when read would show that the Petitioner is contrite. He is a young adult offender. He clearly falls in the category of a young adult who has crossed his age of juvenility but is less than 21 years of age at the time when the offence is committed. It is widely recognised that younger the age of the offender, the lesser is its culpability. Therefore having regard to the totality of the circumstances before me at this stage, on *prima facie* consideration I am inclined to consider the Applicant's case.

16. It should also be noted that in a case where an offender is undergoing studies, his exclusion from education for a period of time is an added layer of punishment over and above what a non-student accused may be subjected to. This is because a student undergoing incarceration suffers loss of precious academic time which cannot be bartered for any wealth in the world. He also constantly witnesses his peers moving ahead in life than compared to him and when the frustration becomes insurmountable such frustration can create an emotion of rebellion, which, coupled with the exposure to criminality

in prison, can easily gain traction and push him to become a hardened criminal.

17. This Court can only make an attempt to positively impact the life of the person before it. It is on the belief that the Applicant, having once gained the confidence of Court, would make a sincere attempt to reform and rehabilitate himself. Considering the foregoing, I am of the opinion that the Applicant should be given a chance to make an attempt to demonstrate that he has reformed his conduct and is leading a law-abiding life with prospects of making a positive impact on society.

18. In view of the above despite vehement objection raised by Ms. Ganapathy, learned APP to consider the antecedents of the co-accused, I am inclined to grant bail to the Applicant before me in order to ensure that an opportunity is given to the Applicant to take admission in 12th standard on his release from prison in the next academic year and continue his education. If Applicant is released from jail the avenue will be open for him to take admission in 12th standard in forthcoming academic year 2025-2026.

19. In view of the above observations, Bail Application stands allowed on the following conditions:-

- (i) Applicant – Avinash Ajay Benewal is directed to be released on bail on furnishing P.R. Bond of Rs.25,000/-

(Rs. Twenty Five Thousand only) with one or two sureties in the like amount;

- (ii) Applicant shall report to the Investigating Officer of the concerned Police Station, once every month on the first Sunday of every month between 02:00 p.m. to 04:00 p.m. for a period of six months in the first instance and thereafter as and when called for by the Investigating Officer;
- (iii) 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;
- (iv) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (v) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner;
- (vi) Applicant shall keep the Investigating Officer informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time, as applicable; and

(vii) Any infraction of the conditions shall entail the prosecution to seek cancellation of bail granted to the Applicant.

20. The aforesaid observations are *prima facie* on the basis of record of the case and is an expression of opinion by this Court only for the purpose of grant of bail to Applicant and shall not influence the trial in the present case.

21. Bail Application stands allowed and disposed.

[MILIND N. JADHAV, J.]

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