

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO.220 OF 2021

Selvaraj Natrajan Nadar

.... Applicant

versus

State of Maharashtra

.... Respondent

.....

- Mr.Ganesh Gupta, Advocate for Applicant.
- Mr.Ameet A. Palkar, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 26th JULY, 2021

(Through video conferencing)

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.245/2020 registered with Dharavi Police Station, under sections 307, 504, 506(2) r/w 34 of the Indian Penal Code and under section 37(1)(a), 135 of the Maharashtra Police Act. The Applicant was arrested on 08/06/2020 and since then he is in custody. The investigation is over and the charge-sheet is filed.

2. Heard Mr.Ganesh Gupta, learned counsel for the Applicant and Mr.Ameet A. Palkar, learned APP for the State.
3. The FIR is lodged by one Sudarshan Suresh Nadar, in respect of assault committed by the Applicant on his cousins Mahadesh and Dinesh. He has stated that, on 07/06/2020, at about 10.30 p.m., when he was in his house, he saw that both the injured were lying outside his house. They had suffered serious injuries. He made enquiries with them. They told him that they were chitchatting at Shivneri Garden. At that time, suddenly present Applicant and one Dharmasilan Nadar, came there with sharp weapons and started assaulting these injured because of some previous quarrel. The injured shouted for help, but the assailants threatened the people in the locality. Thereafter both the injured came towards house of the first informant and then they were taken to Sion hospital on the informant's two wheeler. On this basis, FIR is lodged.
4. Learned counsel for the Applicant submitted that the evidence of the injured eyewitnesses and the informant is not

supported by the medical evidence. He submitted that the Applicant did not have any intention to commit murder of the injured victims. He submitted that the recovery at the instance of present Applicant is extremely doubtful as the weapon was found in the same area, where allegedly the incident had taken place and at which the police had carried out spot panchanama. He submitted that the Applicant is already in custody since 08/06/2020. The investigation is over and his further custody is not necessary. The offence has not escalated to a higher degree. Both the injured survived and have recovered. The other accused against whom similar allegations are made, are already granted bail. Therefore on the ground of parity, the Applicant deserves to be released on bail.

5. Learned APP opposed this application. He submitted that a sharp weapon was used for causing grievous injury on vital part of the body. Intention of committing murder is made out from the act itself. He, however, submitted that there are no antecedents against the present Applicant.

6. I have considered these submissions. Apart from the first informant, the statements of both the injured Dinesh and Mahadesh are important. Both of them have consistently stated that on 07/06/2020 in the morning, there was some exchange of words between both the accused and these victims. The accused had threatened them in the morning. In the night at about 10.00 p.m. suddenly both the accused came near them. They started abusing the victims. Suddenly, the Applicant removed a big knife kept near his waist and gave blows on Dinesh's chest and stomach causing serious injuries. Thereafter the Applicant also gave blows on Mahadesh. The other accused Dharmasilan Nadar gave blow with iron rod on the informant's head. Both of them were assaulted with kicks and fist blows. Local residents came for their rescue, but the accused threatened them with their weapons. After that, both the injured went walking towards the informant's house and then they were taken to hospital on the informant's two wheeler. Dinesh sat in between the informant and Mahadesh.

7. Thus, there is consistent version of both the injured witnesses as well as the first informant. Apart from these witnesses, there are statements of other independent eyewitnesses in the form of statements of Jaykumar Arundhati and Nesmani Nadar. Both of them have supported the prosecution case. However, their statements are recorded belatedly on 17/06/2020 and 29/06/2020.

8. The injured Mahadesh had suffered one sharp penetrating wound 6 x 3 x 2 cms. over left flank, which was described as a grievous injury. However, X-ray of chest was normal. There was renal laceration with perinephric hematoma AAST Grade II Renal injury. The other injured Dinesh had suffered one grievous injury of dimension 3 x 4 x 0.5 cms over left hypochondriac region. There was one simple incised wound over left side of chest.

There was another grievous injury on right

hypochondriac region with peritoneal breach and the last injury was also grievous of 4 x 3 x 0.5 cms on left hypochondriac region.

9. Thus the statements of victims and other independent eyewitnesses are supported by this medical evidence. The recovery of weapon at the instance of the Applicant may be little doubtful because it was found from a place which was accessible to all, as it was kept near a tree in a plastic bag.

10. The crucial question in this case is whether the Applicant had the intention to commit murder of both the injured. Undoubtedly both the injured had suffered grievous injuries. However the depth of the injury was up to peritoneum and no vital organ internally was damaged. The important aspect is that both the victims were at the mercy of both the accused carrying sharp weapon and yet the Applicant and the other accused did not inflict more blows to commit their murder. In fact, both the victims went towards the informant's house by

themselves and the Applicant did not obstruct them from going away. This does indicate that, at the highest the Applicant intended to inflict grievous injury, but it is doubtful whether they had intention to commit murder. Of course this aspect will have to be tested during the trial. However, at this stage, sufficient reasons are made out by learned counsel for the Applicant for releasing the Applicant on bail, specially when the Applicant is in custody since 08/06/2020 and the investigation is already over. The offence has not escalated to a higher degree. Co-accused who had taken part in the incident is already granted bail by the Sessions Court. Therefore the Applicant also can be released on bail. As submitted by learned APP the Applicant does not have criminal antecedents. Therefore I am inclined to grant bail to the present Applicant.

11. Hence, the following order :

ORDER

- (i) In connection with C.R.No.245/2020 registered with Dharavi Police Station, the

Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.

- (ii) The Applicant shall attend the concerned police station every fortnight for a period of two years.
- (iii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)