

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

CRIMINAL BAIL APPLICATION NO. 672 OF 2021

Tushar @ Ranjeet Sanjay Gaikwad Applicant

Versus

The State of Maharashtra Respondent

Mr. Rupesh A. Zade for Applicant.

Mr. H. J. Dedhia, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 12th MARCH, 2021

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No. 446 of 2020 registered at Walchand Nagar police station, on 30/09/2020, under sections 326, 323, 504 and 506 r/w. 34 of the Indian Penal Code (for short 'IPC') and under section 4 and 25 of the Indian Arms Act. Subsequently, section 307 of IPC was added.

2. Heard Shri. Rupesh Zade, learned counsel for the applicant and Shri. Dedhia, learned APP for the State.

3. The First Information Report (for short 'F.I.R.') is lodged by one Prashant Budhavale on 30/09/2020. He has stated that, four months prior to lodging of F.I.R. there was some quarrel between the applicant and himself on the ground that the applicant had driven his motorcycle dangerously.

4. Two months prior to lodging of F.I.R. again applicant had abused the informant. At that time, though the informant was not knowing the applicant, he made inquiries and he came to know about the name of the applicant. On 30/09/2020, at about 3:45p.m. the informant had reached PDCC bank at Kalamb. There again the applicant abused him and threatened him. At about 4:00p.m. the informant went to a petrol pump at Kalamb for buying petrol. When he was coming out of the petrol pump area, the applicant came there on motorcycle. It is mentioned in the F.I.R. that there was a tempo near him. The applicant removed a sword from that tempo and started assaulting the informant. The informant suffered injuries on his legs, cheek, chest and right index finger. At that time, the others who were present at the petrol pump, came to his rescue. The applicant went away.

Thereafter this F.I.R. was lodged.

5. Learned counsel for the applicant submitted that the informant has improved his story in his supplementary statement. He had stated in his F.I.R. that the applicant had taken out a sword from the tempo, but in his supplementary statement he has stated that it was taken out from the motorcycle itself. The sword was concealed below the seat. He submitted that, thus, the informant is not telling the true story. He further submitted that, in any case the offence is much lesser. It cannot be the offence under section 307 of IPC as the applicant had ample opportunity to commit informant's murder, if he wanted to do so. He submitted that, except one fracture, other injuries are simple. The applicant is in custody since 06/10/2020. The investigation is over and his custody for further investigation is not necessary.

6. Learned APP opposed this application. He submitted that the manner in which assault was mounted with sword on the informant shows inclination and tendency of the present applicant. Therefore, bail should not be granted to him.

7. I have considered these submissions and with the

assistance of both learned counsel I have perused the charge-sheet. Besides the victim, there are statements of eye witnesses namely Sambhaji Ghodke, Bapu Chavan, Tukaram Bodare, Mangesh Ghodke, Aryan Gaikwad and Ramesh Khomne. All of them have consistently stated about the incident and about the assault mounted by the present applicant on the victim. Besides this direct evidence, there is recovery of sword from the possession of applicant's father. Thus, there is sufficient material to show complicity of the present applicant in the present offence. However, looking at the nature of injuries, it can be seen that the victim had suffered six injuries as follows:

i) Stab injury on left side of chest which is described as superficial injury and categorized as simple injury.

ii) There are four abrasions over maxilla, nose-tip, right forearm and middle region. These are also described as simple injuries and they were superficial injuries.

iii) Last injury was compound fracture of the right index finger. That was a grievous injury.

But the grievous injury was caused to non vital part of

the body and it was not endangering informant's life. Thus, it is doubtful whether section 307 of IPC is applicable in this case. This will have to be decided during trial. However, the applicant is in custody since 06/10/2020. The investigation is over. His further custody for investigation purpose is not necessary. The trial is not likely to commence in near future. Therefore, the applicant can be released on bail with some conditions.

8. Hence, the following order :

ORDER

- (i) In connection with C.R.No. 446 of 2020 registered at Walchand Nagar 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 once in a fortnight for a period of one year from today.
- (iii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)