

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.989 OF 2020

Touseaf Yakub Ansari

Applicant

versus

The State of Maharashtra

Respondent

Mr.M.A.Khan and Tajammul Usman for applicant.

Mrs.Anamika Malhotra, APP, for State.

Mr.Madan Patil, PI, Ghatkopar Police Station, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 17th February 2021

PC :

1. The applicant is seeking bail in CR No.130 of 2020 registered with Ghatkopar Police Station for offences u/s.302, 307, 143, 147, 148, 149 of IPC along with Sections 37(1) and 135 of Maharashtra Police Act and Sections 4 and 25 of Indian Arms Act.

2. The FIR was lodged by Sanjay Krishna Ghotal on 17th February 2020. Initially the offences were registered u/s 143, 147, 148, 149, 307 of IPC. The case of the complainant is that he knows Sushil Sonawane, Yusuf @ Jai Ansari, Vijay Ansari, Sanjay Ansari, Mangesh Agrawal, Sandesh Agrawal, Tausif Ansari and Rahul Sapkal. About 4 years ago there was altercation during Holi festival between Amol Dongare and Yusuf @ Jay Ansari. Complaints were filed at Police Station. Amol and his friend Yusuf @ Jai Ansari and their friends used to pick up quarrels. On 16th February 2020 the complainant was walking in front of his house and at about 9 pm he saw that Sushil Sonawane and Amol Dongare were being assaulted by Yusuf,

Vijay, Mangesh, Sandesh, Rahul and Sanjay with sticks and sword. The complainant intervened to resolve the dispute. Sushil was assaulted by Yusuf by giving blow of tile on his head. The complainant tried to help Sushil. At that time Vijay picked up another tile from the place of incident and assaulted him by giving blow on his head. Mangesh assaulted Amol with bat. Vijay, Mangesh, Sandesh, Rahul, Sanjay assaulted with sticks. While Amol tried to run away, Yusuf assaulted him with sword on his head which was evaded by him which resulted in injuries to his fingers. The complainant's wife Suhasini intervened. She was assaulted by Yusuf by sword on her hand. She sustained injury.

3. From FIR it is apparent that although complainant knows the applicant, no role has been attributed to him. Even his presence was not shown at the scene of offence. During the course of investigation statements of injured persons were recorded. Sushil succumbed to the injuries. Hence, Section 302 of IPC was invoked. The statement of Amol Dongare and other witnesses were recorded. The statement of Amol Dongre dated 11th March 2020 refers to the incident dated 16th February 2020. He has not referred to presence and participation of applicant in the incident. Ashish Sasane, whose statement was recorded on 24th February 2020, is not an eye witness to the incident and his version is in the nature of hear-say. Prathamesh is the son of complainant. His statement was recorded on 19th February 2020. He has stated that Jay, Vijay, Rahul, Tausif (applicant) and others were assaulting Sushil with tiles, stone and pevar block. Jai tried to assault Amol with sword. He sustained injuries to his fingers. Similarly Pritesh whose statement was recorded on 28th February 2020 also give similar version. Suhasini who is the wife of complainant, and injured person also alleges that

applicant was present at the place of incident. She has also specifically stated that others were holding weapons. She has attributed specific overt act to other accused.

4. Learned advocate for the applicant submitted that except two witnesses who are the sons of the complainant, no other witness has attributed role of assault to the applicant. Although complainant knows the applicant, which is evident from the FIR, he does not refer his presence at the scene of offence. Cross case was registered against witnesses in the present case vide CR No.131 of 2020 on 17th February 2020 for offences under Sections 307, 143, 147, 148 of IPC. In the said FIR it was stated that sons of Sanjay Ghotal, who is complainant in the present case, namely Prathamesh @ Banty, Paresh and others were involved in that assault. Most of the witnesses in the present case are impleaded as accused in the said FIR.

5. Per contra, learned APP submitted that discrepancies, if any, can be considered at the appropriate stage and not at the stage of bail. Role has been attributed to him by some of them. Section 149 has been invoked in this case. Since his presence is established, even if no overt act of assault is attributed to him, he can be charged on account of Section 149 of IPC as participant in the crime. Two witnesses have referred to the role played by the applicant as person who was involved in the assault. He relied upon the decision of Supreme Court in the case of **Mizaji and another Vs. State of Uttar Pradesh (AIR-1959-SC-572)**.

6. The applicant was arrested on 27th March 2020. Investigation is completed and charge sheet is filed. I have perused the charge sheet. The first informant is Sanjay Ghatol. On perusal of the FIR it

is apparent that he knows the applicant. He has mentioned the incident in detail. He is the eye witness to the incident. He is also injured person. Specific role has been assigned to the persons who had participated in the incident dated 16th February 2020. However, he did not refer to the presence of applicant at the scene of offence. Amol is another injured person in this case. Even he has not referred to the presence and participation of applicant in the crime. The sons of complainant namely Prathamesh and Pritesh whose statements were recorded subsequently, had alleged that applicant and others had assaulted the injured persons. It is not stated specifically that the applicant was armed with specific weapon. The wife of complainant and mother of this witness was also allegedly injured in this case. Her statement refers to presence of the applicant, but no specific overt act has been attributed to him. He was not armed with any weapon. Cross case is registered where witnesses in the present case are impleaded as accused.

7. Considering the nature of evidence, the applicant need not be detained further in custody. Case for grant of bail is made out. Hence, I pass following order :

ORDER

- (i) Bail Application is allowed and disposed of;
- (ii) The applicant is directed to be released on bail in connection with CR No.130 of 2020 registered with Ghatkopar Police Station, on his executing PR bond in the sum of Rs.30,000/- with one or more sureties in the like amount;
- (iii) The applicant shall stay out of jurisdiction of Ghatkopar Police Station till further orders;
- (iv) The applicant shall attend Trial Court proceedings on every

date of hearing unless exempted by the Trial Court;

(v) The applicant shall furnish details of his place of residence and mobile number to the Investigating Officer after he is released on bail;

(vi) The applicant shall not tamper with evidence and shall not approach the witnesses;

(vii) The applicant is permitted to furnish provisional cash bail security in the sum of Rs.30,000/- for eight weeks in lieu of sureties.

8. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or e-mail of a digitally signed copy of this order.

(PRAKASH D. NAIK, J.)

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