

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2295 OF 2019**

Nagesh Chandrakant Dande	...Applicant
Versus	
State of Maharashtra	...Respondent

**ALONGWITH
INTERIM APPLICATION NO. 598 OF 2021**

Rahul Samarbahadur Singh	...Applicant
Versus	
State of Maharashtra	...Respondent

Mr. Kabul Singh Labana for the Applicant.

Mr. S.V.Gavand, A.P.P for the Respondent-State.

Mr. Dheeraj Panchange i/by Mr. Swapnil R. Chopade-Patil for the Original Complainant.

CORAM : REVATI MOHITE DERE, J.
DATE : 25th FEBRUARY, 2021

P.C. :

1. Heard learned Counsel for the parties.
- 2 By this application, the applicant seeks his enlargement on bail in connection with C.R. No. I-193 of 2018 registered with the Ambarnath

Police Station, for the alleged offences punishable under Sections 307, 452, 143, 147, 148, 149, 427 of the Indian Penal Code; Section 4, 27 of the Arms Act; and Section 37(1) read with 135 of the Maharashtra Police Act.

3. Learned Counsel for the applicant submits that a perusal of the statements of Rahul and Raju Gosavi recorded under Section 161 and Section 164 of the Criminal Procedure Code reveals that there are some discrepancies in the said statements, with respect to the weapons allegedly used by the applicant. He submits that although, injured witness Rahul has stated that the applicant was armed with a sword and assaulted him and Raju with a sword, Raju Gosavi in his 164 statement has stated that the applicant was armed with a knife. He further submitted that the ocular evidence does not corroborate the medical evidence, inasmuch as, if 10 to 15 people are alleged to have assaulted Rahul and Raju with deadly weapons i.e. sword, knife etc., the injuries sustained by Rahul and Raju would have been multiple and also serious/grievous injuries and not simple injuries. Learned Counsel for the applicant relied on the Injury Certificates of Rahul and Raju Gosavi, which are at page Nos. 116 and 114 of the application respectively. Learned Counsel for the applicant has tendered an affidavit of the applicant that if he is enlarged on bail, he will not stay in the jurisdiction of the Ambarnath Police Station; that he will not indulge in

any kind of fight / offence; that he will attend the trial court on all the dates, failing which, his bail may be cancelled; and that he will not tamper with the prosecution evidence. The said affidavit-cum-undertaking is taken on record.

4. Learned APP opposes the application.

5. Learned Counsel for the intervenor / complainant also opposes the application.

6. Perused the papers. The incident, in question, is alleged to have taken place on 01/08/2018 at about 5.30 p.m. to 5.45 p.m., when Rahul Singh and Raju Gosavi had gone to the office of Sachin Bhoir. According to Rahul Singh and Raju Gosavi, the applicant alongwith Appa Dande, Anand and 10-15 others, came on motorcycles; that all the said persons were armed with swords, iron rods and knives; that the said persons entered the office of Sachin Bhoir, by breaking open the lock; and that the applicant alongwith others assaulted Rahul and Raju with the said weapons. No doubt, there are some discrepancies in the 164 statement of Rahul and Raju with respect to the weapon allegedly used by the applicant, nevertheless the statements on record show the presence of the applicant at

the spot. A perusal of the Injury Certificates of Rahul and Raju reveal, that Raju Gosavi has sustained five simple injuries i.e. a lacerated wound on the scalp; a lacerated wound on the right arm; a lacerated wound on the left leg; and a blunt trauma on the chest, and Rahul Singh has also sustained five injuries i.e. (1) CLW on the scalp left temporo parietal area; (2) incised wound on the left wrist dorsal aspect; (3) incised wound on the left palm; (4) incised wound on the left index finger; and (5) fracture of right ulna. All injuries except injury No.5 (of Rahul Singh) appears to be simple injuries. Prima facie, if 10-15 persons as alleged are stated to have assaulted Raju and Rahul with swords, knives and iron rods, the nature of injuries would have been grievous. The Injury Certificate of Raju shows that the weapons used, could be 'a hard and blunt object'. The applicant is in custody since 03/08/2018. Investigation is complete and chargesheet is filed. Till date, the trial has not commenced.

7. Considering the aforesaid as well as an affidavit-cum-undertaking filed by the applicant as stated aforesaid, the application is allowed and the applicant is enlarged on bail on the following terms and conditions :

ORDER

- (i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 25,000/- with one or two local sureties in the like amount;

- (ii) The applicant shall attend the concerned Police Station on the first Sunday of every month between 10:00 a.m. to 12:00 noon from the date of his release till the conclusion of the trial;

- (iii) The applicant shall not enter in the jurisdiction of Ambarnath Police Station and Badlapur Police Station, except for the purpose of attending the trial court and police station;

- (iv) The applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

- (v) The applicant to cooperate with the conduct of the trial and attend the trial Court on all dates, unless exempted;

(vi) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(vii) The applicant shall file an undertaking with regard to clauses (ii) to (vi) in the trial Court, within two weeks of his release;

(vii) If there is breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

8. The application is allowed in the aforesaid terms and is accordingly disposed of.

9. In view of the disposal of the application, the interim application does not survive and the same is also disposed of.

10. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in

accordance with law, uninfluenced by the observations made in this order.

11. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.