

Santosh

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

BAIL APPLICATION NO. 1406 OF 2022

Raju Jokhanprasad Gupta ...Applicant

Versus

State of Maharashtra ...Respondent

Mr. Abhinav Chnadrachud, i/b Premkumar Pandey, a/w
Khusboo Pathak, for the Applicant.

Mrs. M. R. Tidke, APP for the State.

CORAM: N. J. JAMADAR, J.

DATED : 14th July, 2022

ORDER:-

1. The applicant, who is arraigned in CR No.275 of 2021, registered with Shirval Police Station, District Satara, for the offences punishable under Sections 120B, 307, 326, 324, 347, 385, 386, 143, 147, 148, 149, 427, 504 and 506 of the Indian Penal Code, 1860 ("the Penal Code") has preferred this application to enlarge him on bail.

2. The prosecution case runs as under:

(a) Kiran Ratilal Kataria (the first informant) is working as a Vice-President (HR) with Rieter Company, situated at Wing, Taluka Khandala. The applicant Raju Gupta is the proprietor of 'Ravi Steel Scrapwalla'. Since six years prior to the occurrence the applicant was lifting the scrap generated at Rieter Company.

On 1st November, 2021, the company terminated the scrap material contract with the applicant. Since then, the applicant and accused no.10 Sachin Gaikwad were calling on the first informant and other senior officers of the company to restore the contract. The applicant and co-accused no.10 Sachin Gaikwad exerted pressure on the officers of the company from various quarters. Yet, the contract was not restored. The applicant thus had a grudge against the officers of the Rieter company.

(b) The prosecution alleges that the applicant and the co-accused hatched a conspiracy to mount an attack on the officers of the company so as to pressurize them to again give the contract to the applicant. On 27th December, 2021, at about 6.45 pm., while the first informant was on his way to Pune in an Innova Car No.MH-12/RF-4393, accused nos.2 to 7 formed an unlawful assembly. Accused nos.2 and 4 intercepted the car by halting a Hero-Honda motorcycle across the car. Accused nos.3 and 7 came on another motorcycle, without a number-plate, towards the side of car where the first informant was sitting and made him to down the window glass. Accused no.4 was armed with a scythe. Accused no.4 gave a blow by means of scythe on the neck of Amar Sonawane, the driver of the car. The first informant was pulled out of the car. Accused no.4 attempted a

blow by means of the scythe on the neck of the first informant. The latter took an evasive action. At that time, accused no.4 questioned as to why the scrap contract of the company with Gupta, the accused no.1, was cancelled and threatened the first informant to restore the contract. Whilst exhorting that the first informant's life would not be spared, accused no.4 gave a blow by means of fist on the right eye of the first informant. As the other employees of the company reached the scene of occurrence, the assailants fled away.

(c) The rest of the accused aided and abetted the commission of the offences by providing arms, resources and information, by entering into a conspiracy.

3. The applicant and co-accused came to be arrested. Post completion of investigation charge-sheet has been lodged.

4. The applicant has preferred this application with the assertions that the offence punishable under Section 307 of the Penal Code is not *prima facie* made out. There is no *prima facie* material to connect the applicant with the alleged conspiracy and the offences. Co-accused has been released on bail. Since the investigation is complete and the applicant has been in custody since 28th December, 2021, further detention of the applicant as an under-trial prisoner is not warranted.

5. I have heard Dr. Chndarachud, the learned Counsel for the applicant, and Ms. Tidke, the learned APP for the State, at some length. With the assistance of the learned Counsels for the parties, I have perused the report under Section 173 of the Code of Criminal Procedure, 1973 ("the Code") and the documents annexed with it.

6. The gravamen of indictment against the applicant is that the applicant was desperate to have restored the contract to lift the scrap material from Rieter Company, which was terminated. The applicant allegedly made repeated requests, met the officers of the company and even attempted to exert pressure from various quarters on the officers of the company. Yet, the company did not revisit the decision to terminate the contract with the applicant. Therefore, the applicant had a grudge against the officers of the company including the first informant and on the day of the occurrence, in pursuance of the criminal conspiracy, the accused nos.2 to 7 committed the aforesaid offences.

7. The learned Counsel for the applicant submitted that the material available against the applicant in support of the allegations of conspiracy primarily consists of the statement of the first informant and the disclosure statement allegedly made

by the co-accused Nikhil Jadhav implicating the applicant and Dipesh Yadav, another co-accused as the persons at whose behest the said attack was mounted. It was submitted that a disclosure statement under Section 27 of the Evidence Act does not constitute an incriminating circumstance against the co-accused. The learned Counsel further submitted that there is a discrepancy as regards the utterances of the assailant at the time of the alleged occurrence with regard to the identity of the applicant as the person for whom the first informant and the injured were attacked. The statements of other witnesses wherein they have made an endeavour to assert that when the applicant and Sachin Gaikwad had visited the company on 3rd November, 2021, upon being told that the company would stand by the decision to terminate the contract, they had threatened that harm would be caused to the officers of the company in case the contract was not restored, according to the learned Counsel for the applicant, do not command reliance.

8. In opposition to this, the learned APP would urge that the applicant had a strong motive to cause harm to the senior officer of the company so as to pressurize the company to award the contract of lifting scrap to the applicant. It was submitted that not only the assailant referred to the name of the applicant

but also threatened the first informant to re-award the contract to the applicant. Chandrashekhar Jagtap, who works in the Supply Management Department of the Rieter Company has specifically stated about the threat given by the applicant and co-accused Sachin Gaikwad. Lastly, the circumstantial evidence in the form of call detail record, which shows that the applicant was in touch with the co-accused, incriminates the applicant. Therefore, at this stage, it cannot be said there is no material to show the complicity of the applicant for the offences for which he has been arraigned.

9. At the outset, it is necessary to note that the claim of the first informant and Amar Sonawane, the injured witness, that they were waylaid and assaulted, *prima facie*, finds support in the injury certificate. Injury certificate of the applicant indicates that the applicant had suffered redness and swelling on the left eye. The said injury, *prima facie*, co-relates with the claim of the applicant that accused no.4 had given a fist blow on his eye. Injury certificate of Amar Sonawane, the driver, indicates that he had sustained a CLW on right supraclavicular region and tenderness on the right shoulder. These injuries also, *prima facie*, co-relate with the allegations of the first informant and Amar Sonawane that co-accused no.4 gave blow

by means of scythe on the neck of Amar Sonawane, the driver. *Prima facie*, there is material to show that the first informant and Amar Sonawane had suffered injuries in the alleged occurrence. However, injuries appeared to be simple.

10. The role attributed to the applicant is that of being a prime conspirator. The prosecution seeks to press into service three circumstances. First, accused no.4 while assaulting the first informant questioned as to why the contract of Gupta was terminated. The first informant categorically asserts about the said utterances. Amar Sonawane, the driver, stated that the assailant was giving some threat to the first informant and thereafter gave a blow. He did not specify the nature of the threat. At this stage, this factor does not detract materially from the prosecution.

11. The second circumstance is the disclosure statement made by Nikhil Jadhav, wherein the co-accused allegedly disclosed that at the instance of Dipesh Yadav and the applicant they had assaulted the first informant and the driver. The learned Counsel for the applicant was justified in canvassing a submission that a disclosure statement made by co-accused under Section 27 of the Evidence Act is not a legal evidence qua a non-maker accused.

12. The third circumstance is formed by the statements of the witnesses, who have stated about the efforts made by the applicants to regain the contract to lift the scrap material from Rieter Company. Attention of the Court was invited to the statement of Chandrashekhat Jagtap, the Supply Management Head of the Company to the effect that on 3rd January, 2021, the applicant and accused no.10 Sachin Gaikwad had called on him and requested to restore the contract as the applicant had raised money from many persons. They were informed that the decision of the management was final. Thereupon, while leaving the office they had given the threat, “if contract is not given to Gupta harm may fall on them”. On 5th November, 2011, WhatsApp message was received from an unknown cellphone (8407999187) that a politician had directed that the contract be given to the applicant only. Mr. Swapnil Ahirrao, who is posted as a Manager in the Supply Division of the company also reiterates the aforesaid fact of having received such message. Lastly, Mr. Sunil alia Tatya Tanaji Katkar, the Personal Assistant of the politician states that the applicant had contacted him on a couple of occasions and requested him to help the applicant to get the contract to lift the scrap material.

13. At this juncture, the Court is not expected to meticulously evaluate the material on record. Out of the three circumstances pressed into service against the applicant, the first one hinges on the veracity of the claim of the first informant. The second circumstance based on the disclosure statement of the co-accused is inherently of weak character. The third circumstance of the threat having been given on 3rd November, 2021, *prima facie*, appears to be pressed into service against the applicant as well as Sachin Gaikwad, the co-accused, who is released on bail.

14. Undoubtedly, the material on record *prima facie* suggests that the applicant was desperate to have the contract to lift the scrap material restored. This may furnish motive for the alleged offences. However, in the totality of the circumstances, the existence of the conspiracy and the nexus between the applicant and the assailants are the matters for evidence and trial. The fact that the first informant and injured, *prima facie*, suffered simple injuries also bears upon the exercise of the discretion. The question as to whether the offence punishable under Section 307 of the Penal Code is made out is also a matter for trial.

15. The investigation is complete for all intent and purpose. Charge-sheet has been lodged. Having regard to the number of accused, two of whom are yet to be arrested, the trial may take considerable time.

16. The applicant appears to have roots to tie him down to his place of abode and business.

17. The learned APP submitted that the applicant is a native of Delhi. Since the applicant has been dealing with the company since six years prior to the occurrence, the possibility of fleeing away from justice appears to be remote, and yet can be taken care of by imposing conditions.

18. For the forgoing reasons, I am persuaded to exercise the discretion in favour of the applicant.

19. Thus, the following order:

: O R D E R :

(i) The application stands allowed.

(ii) The applicant - Raju Jokhanprasad Gupta be released on bail, in CR No.275/2021, registered with Shirval Police Station, on furnishing a P. R. Bond in the sum of Rs.50,000/-, with one or two sureties in the like amount to the satisfaction of the learned Sessions Judge, Satara.

(iii) The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to any of the prosecution witnesses.

(iv) The applicant shall furnish his permanent residential address and contact details including cellphone number to the Police Inspector, Shirval Police Station and intimate the change, if any.

(v) The applicant shall mark his presence at Shirval Police Station on the first Monday of September, January and April, for the period of two years or till the conclusion of the trial, whichever is earlier.

(vi) The applicant shall regularly attend the proceedings before the jurisdictional Court.

(vii) By way of abundant caution, it is clarified that the observations made hereinabove are confined to the consideration of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the co-accused.

(viii) All concerned to act on an authenticated copy of this order.

[N. J. JAMADAR, J.]