

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

CRIMINAL BAIL APPLICATION NO.2051 OF 2021

Jaysingh Girwarsingh Thakur Applicant
Versus
The State of Maharashtra Respondent

Mr. Deepak Gautam, Advocate for the Applicant.
Smt. Rutuja Ambekar, APP for the Respondent-State.

**CORAM : SARANG V. KOTWAL, J.
DATE : 15th FEBRUARY, 2022**

P.C. :

1. The applicant is seeking his release on bail in connection with C.R.No.468/2108 registered at Narpoli police station, Bhiwandi, District-Thane on 6.12.2018 under Sections 307 and 504 of the Indian Penal Code, under Sections 3 and 25 of the Indian Arms Act and under Sections 37 and 135 of the Maharashtra Police Act.

2. Heard Shri Deepak Gautam, learned counsel for the applicant and Smt. Rutuja Ambekar, learned APP for the State.

3. The prosecution case is about assault caused to one Arjun Sarkar by one Dulal with pistol.

4. The FIR was lodged by the wife of Arjun Sarkar. She has stated that on 5.12.2018, in the night, there was quarrel between the first informant and Arjun Sarkar. She had left the home in the night and had gone to a relative's place. In the night she was informed that Arjun Sarkar was admitted to a hospital in ICU. She went there and enquired. She was told that Dulal had assaulted him. Though the FIR says that the injured was assaulted with a sharp weapon, she had corrected herself in the supplementary statement and stated that because of fear she had not told the truth but in fact the injured was fired at with a pistol. In that context, the statement of the injured was recorded. His statement was recorded under Section 161 as well as under Section 164 of Cr.P.C. He has stated that on 5.12.2018 in the night the main accused Dulal called him to meet him. Both of them travelled on the injured's two-wheeler. It was driven by Dulal. He took Arjun to a secluded spot and suddenly stopped the vehicle.

After parking the vehicle, he removed a pistol and started firing at the injured. The injured suffered injuries because of the firearm. After that Dulal ran away from the spot. The injured sought help from those who were passing from that road. Somebody called the police. Then the police reached there and took the injured to the hospital. Thus, it is clear that the injured was fired at by Dulal.

5. The injury certificate of Sion Hospital shows that the injured had suffered eight wounds, out of which six injuries were caused by firearms. The injured survived this attack and the offence has not escalated to a higher degree.

6. Learned counsel for the applicant submitted that there is no material against the applicant. He submitted that there is no admissible piece of evidence against the present applicant. There is a reference to the applicant's name in the inadmissible portion of the statement given by the co-accused Dulal, which was recorded under Section 27 of the Evidence Act. There is nothing recovered at his instance and, therefore, he deserves to be released on bail.

7. Learned APP opposed this application. She submitted that the applicant has many antecedents including one case under the MCOC Act. Learned counsel for the applicant produced a copy of the order showing that the applicant was granted bail in the MCOCA offence.

8. Learned APP thereafter submitted that the prosecution case is that the pistol was provided by the applicant to Dulal. However apart from the inadmissible portion which is referred to hereinabove, there was no other material to substantiate this fact.

9. I have considered these submissions. The statement of the injured itself shows that the firearm was used by Dulal. There was no one else at the spot when this incident took place. Therefore, it is not the prosecution case that the applicant had taken part in the actual use of firearm. The only allegation against him is that he has provided this weapon to the main accused Dulal. However, to support this allegation there is no admissible material in the entire charge-sheet.

10. Though there are antecedents against the present applicant, considering the very weak nature of the evidence against the applicant, those antecedents will not come in his way for grant of bail. The injured had survived and did not die because of this attack. The offence has not escalated beyond Section 307 of IPC.

11. The applicant is in custody since 8.12.2018. The investigation is over and the charge-sheet is filed. Therefore, he deserves to be released on bail. However, looking at the antecedents against him, some conditions are required to be imposed on him.

12. Hence, the following order :

ORDER

- (i) In connection with C.R.No.468/2108 registered with Narpoli police station, Bhiwandi, District-Thane, the applicant is directed to be released on bail on his furnishing a PR bond in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) with one or two local sureties in the like amount.

- (ii) The applicant shall attend the concerned police station once in a fortnight for a period of two years from today and shall attend the court regularly.
- (iii) The Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)

Deshmane (PS)