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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.4424 OF 2021

Nilesh Raju Kudale Applicant
Versus
The State of Maharashtra Respondent

Mr. Shreyas P. Barsawade for the Applicant.
Mr. P.H. Gaikwad, APP for the State.
Mr. Rajkumar D. Barde, API, Bibavewadi Police Station, Pune.

CORAM : N.J. JAMADAR, J.
DATE : 4th JULY, 2022

P.C. :

1. This is an application for bail. The Applicant is arraigned in C.R.No.611 of 2020 registered with Bibwewadi Police Station, Pune for the offences punishable under Sections 307, 326, 323, 504, 506 read with Section 34 of the Indian Penal Code, 1860 (the "Penal Code").

2. The gravamen of indictment against the applicant is that on 19.08.2020 at about 9.00 p.m. Omkar Shelke (first informant) had been to 'Ganesh Idol' Sale Stalls. While the first informant was speaking with his friends, co-accused Sunny Salve, Manish Shelke, applicant and other unknown persons accosted him. The applicant and co-accused Manish Shelke caught hold of him. Co-accused Sunny Salve who was armed with a big scythe aimed blows on his head and neck. The first informant took defensive action. The first informant sustained multiple grievous injuries on his hand. The applicant, co-accused and other unknown

assailants assaulted the first informant by fist and kick blows. The first informant's friends tried to intervene, but they were threatened by Sunny. The applicant and co-accused threatened to assault them as well.

3. The applicant and co-accused were arrested. Post completion of investigation, charge-sheet has been lodged against the applicant and the co-accused.

4. Heard the learned counsel for the Applicant and the learned APP for the State.

5. The learned counsel for the applicant submitted that the role attributed to the applicant is that of catching hold of the first informant. Co-accused Sunny allegedly assaulted the first informant by means of fist and kick blows. 17 injuries found on the person of the first informant are shown to have been caused by sharp object. The learned counsel further submitted that the co-accused Manish Shelke has been ordered to be released on bail by an order dated 31.03.2021. The applicant is similarly circumstanced. Hence, the applicant also deserves the same dispensation.

6. The learned APP resisted the prayer to enlarge the applicant on bail. It was submitted that the first informant sustained grievous injuries. He suffered a fracture. Out of 17 injuries, 12 injuries are grievous. It was further submitted that the antecedents of the applicant disentitle him from the exercise of discretion in his favour.

7. I have carefully perused the report u/s.173 of the Code of Criminal Procedure, 1973 and the documents annexed with it. It is pertinent to note that the role attributed to the applicant is of catching hold of the first informant and assaulting him by means of kick and fist blows. The applicant was not armed with any weapon. It is also pertinent to note that the injury certificate reveals that the first informant had sustained 17 injuries by sharp weapon. The learned counsel for the applicant was thus justified in canvassing a submission that the role of the co-accused Sunny and that of the applicant is materially distinct.

8. The material on record undoubtedly indicates that the first informant was assaulted by means of sharp weapon and there are statements of witnesses which lend support to the version of the first informant. However, the role attributed to the applicant is materially distinct. The allegations against the applicant are identical to that of the co-accused Manish Shelke, who is released on bail.

9. The applicant is a young person. It is also pertinent to note that the applicant is in the custody for last 20 months. The apprehension on the part of the prosecution can be taken care of by imposing appropriate conditions.

10. I am, therefore, persuaded to exercise the discretion in favour of the applicant. Hence, the following order.

ORDER

- (i) The application stands allowed.
- (ii) The applicant Nilesh Raju Kudale be released on bail on furnishing a P.R. bond in the sum of Rs. 25,000/- with one or two sureties in the like amount to the satisfaction of the learned Additional Sessions Judge, Pune.
- (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 address and cell phone number to the investigating officer, Bibwewadi Police Station, Pune within seven days of his release from prison and intimate the change, if any.
- (v) The applicant shall mark his presence at Bibwedali Police Station, Pune on first Monday of every alternate month in between 10.00 am. to 11.00 am., for a period of one year.

(N.J. JAMADAR, J.)