

AGK

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

BAIL APPLICATION NO.818 OF 2023

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Bandu Subhash Gorane

... Applicant

V/s.

The State of Maharashtra

... Respondent

Mr. Aniket Vagal with Mr. Kunal Pednekar for the applicant.

Mr. P.H. Gaikwad, APP for the respondent/State.

CORAM : AMIT BORKAR, J.

DATED : JULY 20, 2023

PC.:

1. This is an application under Section 439 of the Criminal Procedure Code, 1973 seeking bail in connection with C.R. No.194 of 2020 registered with Yeola Taluka Police Station for offences punishable under Sections 307, 323, 324, 504, 506, 143, 147, 149 of the Indian Penal and Sections 37(1), 135 of the Bombay Police Act.

2. According to prosecution, the applicant had obtained hand loan from the informant. When the informant demanded money back, the applicant threatened the informant of assaulting him. The incident occurred on 28 June 2020 at 10.00 a.m. while the informant was at his home, the applicant along with 15 to 20 persons came on motorcycle. The applicant assaulted the

informant; however, Macchindra intervened resulting in blow of axe on his head. Macchindra got grievous injury. The accompanying persons along with applicant assaulted family members. Shankar has been grievously injured on his leg. Injured persons were taken to the hospital. The applicant was arrested on 3 September 2020.

3. According to the learned advocate for the applicant, cross-FIRs were filed in relation to the incident in question. The applicant was also grievously hurt in the incident. All remaining accused have been released on bail. Charges are yet to be framed. Considering the nature of injuries of Macchindra and absence of criminal antecedents, the applicant is entitled to the grant of bail.

4. Per contra, learned APP opposed grant of bail. According to him, considering the fact that assault was pre-meditated. The applicant carried deadly weapon. The assault was on vital part and, hence, the bail application deserves to be rejected.

5. On perusal of the charge-sheet, it appears that according to prosecution while assaulting informant, Macchindra intervened. The injury certificate of Macchindra indicate simple injuries. There were cross-FIRs between the parties. During the trial, the Trial Court will consider who was aggressor. Though the injury is not the sole factor for adjudication of offence under Section 307, intention needs to be decided during trial.

6. On consideration of nature of assault and lodging of cross-FIRs, the manner of assault and resultant injuries, absence of criminal antecedents of the applicant entitles him for bail.

Moreover, charges are yet to be framed. It is unlikely that the trial will complete in near future. The applicant has no criminal antecedents to his discredit. Therefore, overall consideration of factors above, the applicant has made out a case for relief under Section 439 of the Criminal Procedure Code, 1973. Hence, following order:

- a) The applicant be released on bail in connection with C.R. No.194 of 2020 registered with Yeola Taluka Police Station for offences punishable under Sections 307, 323, 324, 504, 506, 143, 147, 149 of the Indian Penal and Sections 37(1), 135 of the Bombay Police Act on furnishing P.R. Bond in the amount of Rs.25,000/- with one or two sureties in the like amount;
- b) The applicant shall mark his presence before the concerned police station on first Saturday of each month till conclusion of the trial;
- c) The applicant shall remain present before the Trial Court on each and every date unless specifically exempted by the Court;
- d) The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court;

7. The bail application stands disposed of in above terms. No costs

(AMIT BORKAR, J.)

Note: This order is modified as per order dated 3 August 2023 to substitute paragraph 6(a).