



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.480 OF 2024**

Varun Sundar Shetty	...	Applicant
versus		
State of Maharashtra and Ors.	...	Respondents

Mr. Sanjeev Kadam with Mr. Ashwin Sawlani with Mr. Dinesh D. Dey for Applicant.
Mrs. Geeta P. Mulekar, APP for State.
Mr. Nikhil Adkine, for Respondent Nos.2 and 3.

CORAM: N.J.JAMADAR, J.

DATE : 5 FEBRUARY 2024

P.C.

1. Heard the learned Counsel for the parties.
2. Learned Counsel for the first informant seeks leave to tender an affidavits of the first informant and Mr. Manoj Gupta, the injured.
3. Leave granted.
4. Affidavits are taken on record.
5. The indictment against the applicant is that on the night intervening 9 and 10 November 2023, at about 2.55 am., the first informant and his friends Tanmay and Karan had gone near the cemetery. 6-7 persons were assaulting his cousin Rahul Sutar by means of fists and kick blows and sticks. The first informant and his friends went to rescue the cousin of the first informant. Those assailants allegedly assaulted the first informant and his friends. In the scuffle, the applicant had allegedly assaulted

Manoj by means of knife. As Manoj fell down, the first informant went to his rescue. The applicant allegedly assaulted the first informant by means of knife.

6. Learned Counsel for the Applicant submitted that the assault by means of knife was initially attributed to an unknown assailant. Before the court of Session, the first informant and Manoj had filed an affidavit affirming that they had named the applicant and the co-accused as the assailants on account of a misunderstanding as there were a number of persons and that they could not identify the persons who perpetrated the assault. On the basis of the said affidavits, co-accused Rohit and Yadnesh were released on bail. However, the learned Additional Sessions Judge declined to exercise the discretion in favour of the applicant.

7. Learned APP resisted the prayer for bail. It was submitted that there is evidence to indicate that the applicant had assaulted the first informant and the injured by means of knife. Attention of the Court was invited to the statement of Mr. Karan B. Yadav, the alleged eye witness, and the memorandum of disclosure statement of the applicant, pursuant to which the weapon of offence i.e. knife came to be recovered.

8. I have perused the material on record. The medico legal examination report of Manoj Gupta indicates that the assault by means of knife was attributed to an unknown person. Injury certificate of the first informant does not indicate that the first informant had sustained any stab injury. Affidavits of the first informant and injured Manoj, tendered before the Court of Sessions as well as before this Court,

indicate that the first informant and the injured do not subscribe to the prosecution version, as manifested in the FIR. The witnesses claimed that upon viewing the CCTV footages, they have realized that the applicant was not the person who had assaulted the injured and the first informant. The material on record, thus, prima facie, renders the identity of the person who had assaulted the first informant and the injured, in the arena of uncertainty.

9. Moreover, in view of the affidavits filed on behalf of the first informant and the injured and the co-accused having been released on bail on the basis of the said affidavits, a prima facie case for grant of bail can be said to have been made out. I am, therefore, inclined to exercise discretion in favour of the applicant.

10. Hence, the following order :

ORDER

(i) The Application stands allowed.

(ii) The Applicant – Varun Sundar Shetty be released on bail in C.R.No.277 of 2023 registered with Tilak Nagar Police Station on furnishing a PR bond in the sum of Rs.30,000/- and one or two sureties in the like amount to the satisfaction of the trial Court.

(iii) The applicant shall mark his presence at Tilak Nagar Police Station on first Monday of every alternate month between 11 am to 1 pm for a period of two years or till the conclusion of the trial whichever is earlier.

(iv) The applicant shall not tamper with the prosecution evidence. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any police officer.

(v) On being released on bail, the applicant shall furnish his contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.

(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 for the purpose of determination 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 trial Court shall not be influenced by any of the observations made hereinabove.

Application disposed.

(N.J.JAMADAR, J.)