

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 567 OF 2024

SANTOSH
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Rajesh Ram Tangadpalli

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Devendra Patil, for the Applicant.

Mr. Tanveer Khan, APP for the State/Respondent.

PI D. V. Thakur, Bhandup Police Station, present.

CORAM: N. J. JAMADAR, J.

DATED: 4th APRIL, 2024

ORDER:-

1. Heard the learned Counsel for the applicant and the learned APP for the State.

2. This is an application for bail in CR No.646 of 2022 registered with Bhandup Police Station, Mumbai, for the offences punishable under Sections 120B, 307, 326, 324, 143, 147 and 149 of the Indian Penal Code, 1860 ("the Penal Code"), Sections 37(1) read with Section 135 of the Maharashtra Police Act, 1951 and Sections 4 and 25 of the Arms Act, 1959.

3. At the outset, the learned Counsel for the applicant invites the attention of the Court to an order dated 25th January, 2024, whereby co-accused Nilesh Ubale and Tushar Doke have been

released on bail. The learned Counsel submits that the role attributed to the co-accused, who have been released on bail, is more grave than the one attributed to the applicant. In fact, the applicant was not present at the time of the occurrence. The applicant has been roped as he is a witness in a prosecution against Sandesh Hiwale, the injured, in this crime.

4. The learned Counsel for the applicant further submitted that, even otherwise, there is a serious discrepancy in the statement of the first informant and the injured as regards the role attributed to the applicant. The first informant alleged that the applicant and co-accused had assaulted the injured Sandesh Hiwale. In contrast, Sandesh Hiwale attributed the role of assault upon the first informant to the applicant and co-accused.

5. The learned APP resisted the prayer for bail. It was submitted that the CDR indicates that the applicant was in constant touch with the co-accused and the location of the applicant was near the scene of occurrence at the time of the alleged occurrence. Therefore, the applicant was very much privy to the alleged conspiracy to commit the offences.

6. I have perused the report under Section 173 of the Code of Criminal Procedure, 1973 ("the Code") and the documents

annexed with it. While releasing the co-accused on bail this Court had *inter alia* observed as under:

“7. So far as the applicant Nilesh, the first informant has attributed role of assault by means of sword alongwith the co-accused, after he was initially assaulted by Umesh by means of a sword. When the first informant fell down, he claimed to have sustained injuries on his legs. The first informant does not claim that the applicant Nilesh had assaulted him by means of sword. Sandesh, on his part, alleged that initially he was assaulted by Umesh by means of sword and Pawan stabbed him with chopper. Sandesh alleged that when the first informant came to his rescue, the applicant Nilesh, Tushar and co-accused Umesh Tangadpalli and Rajesh Ubale assaulted him by means of sword. *Prima facie*, that role was not attributed to the applicants and co-accused except Umesh Tangadpalli by the first informant.

8. Sandesh further alleged that the applicant Nilesh had assaulted him by means of sword on his back. The injury certificate does not indicate that the injured Sandesh Hivale had sustained any injury.

9. Undoubtedly, there is material to indicate that the applicants were allegedly members of an unlawful assembly. However, when a person is sought to be roped in by invoking the principle of constructive criminality under Section 149 of the Code of Criminal Procedure, the individual role which bears upon the entitlement to bail, deserves to be taken into account.

10. *Prima facie*, no definite overt act appears to have been attributed to Tushar. There is a general allegation that Tushar was also armed with sword. The injury certificate does not indicate that the injured Sandesh had sustained the injury, which was allegedly inflicted by Nilesh.

11. In the aforesaid view of the matter, a *prima facie* case to exercise the discretion is made out. Investigation is complete. Charge sheet has been lodged. The applicant Tushar is in custody since 14th November, 2022 and the applicant Nilesh is in custody since 17th November, 2022. In the backdrop of the nature of the accusation, it is unlikely that the trial can be completed within a reasonable period.

7. The aforesaid reasons especially the inconsistency in the version of the first informant and injured Sandesh Hawale, highlighted in paragraph 7 (extracted above) applies with equal

force to the claim of the applicant for bail. In my view, the principle of parity applies.

8. I am, therefore, inclined to exercise discretion in favour of the applicant.

9. Hence, the following order:

: O R D E R :

- (i) Applications stand allowed.
- (ii) The applicant – Rajesh Ram Tangadpalli be released on bail in CR No.646 of 2022 registered with Bhandup Police Station, Mumbai, on furnishing a P.R. Bond in the sum of Rs.30,000/- with one or two sureties in the like amount.
- (iii) The applicant shall mark his presence at Bhandup Police Station, Mumbai, on the first Monday of every month in between 10.00 am. to 12.00 noon for the period of two years or till the framing of the charge, whichever is earlier.
- (iv) For a period of one year, the applicant shall stay away from the area of Bhandup Police Station.
- (v) 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.

- (vi) 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.
- (vii) The applicant shall regularly attend the proceedings before the jurisdictional Court.
- (viii) 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 stands disposed.

[N. J. JAMADAR, J.]