

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

CRIMINAL BAIL APPLICATION NO. 1271 OF 2023

Mahendra Rghunath UghadeAPPLICANT
V/S
The State Of MaharashtraRESPONDENT

**WITH
CRI-INTERIM APPLICATION NO. 3351 OF 2023
In
CRIMINAL BAIL APPLICATION NO. 1271 OF 2023**

Vishal Nathuram UghadeApplicant
V/S
State Of MaharashtraRESPONDENT

Adv. Rajiv Patil, Sr. Advocate a/w. Adv. S. Raut for the Applicant.
Mrs. G. P. Mulekar, APP for the Respondent-State.
Mr. Amesh Sharma a/w. Adv. Yogesh Jane for the intervener in
IA/3351/2023

CORAM : N. J. JAMADAR, J.
DATE : 18TH JANUARY, 2024

P.C.:

1. The Applicant who is arraigned in C.R. No. 207 of 2020 registered with Murbad Police Station for the offences punishable u/s. 307, 326, 325, 324, 323, 341, 188, 143, 147, 148, 149, 452 and 201 of Indian Penal Code, 1860 and u/s. 27(3) of the Arms Act and Section 37(1) of Maharashtra Police Act, 1951, has preferred this Application to release him on bail.

2. Nathuram Ughade is the cousin of the first informant - Ramesh. Couple of months prior to the day of occurrence, there was a quarrel between Nathuram Ughade and Mahendra Ughade, the Applicant. The Applicant and his family members had a grudge against Nathuram Ughade and family. On 03rd June, 2020 while the First Informant's nephews Akash and Chetan were passing from in front of the house of the Applicant, the later accosted them. The Applicant was allegedly armed with a sword. The Applicant unleashed blows by means of sword. Hearing the alarm, rest of the co-accused nos. 2 to 16 as well as the first informant and the injured came to the scene of occurrence.

3. Accused were armed with diverse weapons like swords, iron rods and bricks. The Applicant and the co-accused assaulted the first informant and as many as 9 members of the first informant's family by deadly weapons in prosecution of the common object of the unlawful assembly. Many of the injured sustained grievous injuries.

4. Mr. Patil, learned Senior Counsel for the Applicant, submitted that the Applicant came to be arrested on 18th June, 2020. Rest of the co-accused have been released on bail. Inviting attention of

the Court to the bail orders in respect of co-accused, Mr. Patil would urge that role attributed to the Applicant and that of the co-accused, who have been released on bail, is more or less identical. In fact, according to Mr. Patil, there was a free fight between two groups armed with weapons and members of the accused party had also sustained injuries in the said occurrence, in respect of which Crime bearing C.R. No. 207 of 2020 was registered at Murbad Police Station. Since the Applicant has been in custody for more than 3 and 1/2 years, the Applicant deserves to be released on bail, urged by Mr. Patil.

5. Mrs. Mulekar, learned APP, resisted the prayer for bail. It was submitted that as many as 10 persons were injured in the rioting committed by the accused. Mrs. Mulekar further submitted that the role attributed to the Applicant cannot be lost sight of. It was the Applicant, who had initiated quarrel by assaulting Akash and Chetan, without any cause or provocation. As many of the injured had sustained grievous and life threatening injuries by means of sword, the Applicant cannot be released on bail.

6. Mr. Amesh Sharma, learned Counsel appearing for the intervener, supplemented the submissions of learned APP. It was urged that specific role of assault by means of sword has been

attributed to the Applicant. Moreover, the Applicant being principal offender, does not deserve exercise of discretion, as the quarrel was raked-up by the Applicant.

7. Undisputedly, the rest of the accused have been released on bail; few of them were granted pre-arrest bail. *Prima facie*, it appears that there was a running feud between the two factions of Ughade family, for few months prior to the occurrence. The matters were reported to police in the past as well.

8. On the day of occurrence, the Applicant allegedly restrained the members of the informant party from passing from in front of his house. It appears that two groups were involved in a fight. In respect of one and the same occurrence, two versions have been reported to the police.

9. I have perused the statements of the persons who were allegedly injured in the assault perpetrated by the Applicant and the co-accused and their injury certificates. Indeed, there is a material on record to show that many of the injured had sustained grievous injuries attributable to sharp and hard objects. The Applicant was allegedly armed with sword. Pursuant to the discovery made from the Applicant, sword and iron rod were

recovered.

10. The question that crops up is, whether the Applicant is entitled to the dispensation, which has been extended to the co-accused. Learned APP and Counsel for the intervener have laid emphasis on the role of the Applicant. However, in my view, many of the co-accused, who have been released on bail, were also attributed the role of assault by means of sword. In fact, the first informant alleged in the FIR that apart from the Applicant - Mahendra, co-accused Bhalchandra, Ravindra and Pundalik were armed with the swords and they assaulted the members of the first party. Ravindra and Pundalik were granted bail by the learned Additional Sessions Judge. Bhalachandra was released on bail by this Court by order dated 14th October, 2022 in BA/3143/2021. It would be relevant to note that in the statements of all injured witnesses the role of assault by means of sword has been attributed to the co-accused who have been released on bail.

11. The fact that a number of persons formed unlawful assembly and allegedly assaulted more than 10 persons from the first informant party, cannot be lost sight of. Undoubtedly, overt act need not be established when Section 149 of the Penal Code is invoked. However, in the case at hand, I do not find any justifiable

reason to single out the role of the Applicant from that of the co-accused, especially those who were allegedly armed with sword and assaulted injured.

12. Moreover, the Applicant has been in the custody for more than 3 1/2 years. Having regard to the nature of occurrence and number of witnesses to be examined, it is unlikely that the Trial can be concluded in a reasonable period.

13. I am, therefore, inclined to exercise the discretion in favour of the Applicant.

14. Hence, the following order:

ORDER

- (i) Application stands allowed.
- (ii) The Applicant be released on bail in CR No. 207 of 2020, registered with Murbad Police Station, Thane on furnishing a PR 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 Murbad police station on the first Monday of every alternate month in between 11 am to 1 pm for the period of two years or till the completion of Trial, whichever is earlier.

(iii) The applicant shall not contact the first informant or any of the witnesses or give threat or inducement to the first informant or any of the witnesses or any person acquainted with the facts of the case.

(iv) The applicant shall furnish the details of his permanent address and cell phone number to the Investigating Officer and keep him informed about the change, if any.

(v) The applicant shall regularly attend the proceedings before the jurisdictional Court.

(vi) 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 co-accused and the trial court shall not be influenced by any of the observations made hereinabove.

Application stands disposed.

Interim Application also stands disposed of.

(N. J. JAMADAR, J.)