

Sayali Upasani

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

BAIL APPLICATION NO.- 1641 OF 2024

Nikhil Suryakant Manjarekar

... Applicant

Vs.

The State of Maharashtra

...Respondent

**SAYALI
DEEPAK
UPASANI**

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Date: 2024.04.20
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Mr. Milan Desai i/b Ms. Ashwini Desai, for Applicant.

Mr. Prashant Jadhav, APP for State/Respondent.

Mr. Dilip Pawar, PI, Kandivali Police Station, Present.

CORAM:- N. J. JAMADAR, J.

DATED:- 18th APRIL, 2024.

PC:-

- 1) Heard the learned Counsel for the parties.
- 2) This application is preferred for bail in connection with CR No. 802 of 2023, registered with Kandivali Police Station, for the offences punishable under Sections 307, 324, 504, 141, 143, 147 and 149 of the Indian Penal Code, 1860, Section 135 read with Section 37 (1) of the Maharashtra Police Act, 1951 and Sections 4 and 25 of the Arms Act, 1959.

3) On 6th November, 2023, there was a scuffle between the informant party and the party representing the applicant. In the said scuffle, it appears that members of both the groups sustained injuries. In connection with the very same occurrence, two First Information Reports were registered.

4) In the FIR leading to the instant CR No. 802 of 2023, it is alleged that after the scuffle broke out and the accused party was leaving the place of occurrence, the applicant fetched a scythe from an auto-rickshaw in which they had reached the scene of occurrence and assaulted the injured – Vaibhav by means of the scythe. Vaibhav sustained grievous injuries. The injury certificate of Vaibhav indicates that he had sustained five stab wounds, a CLW and an undisplaced fracture of the left forearm.

5) The learned Counsel for the applicant urged that, in fact, the informant party was the aggressor and the scythe with which the injured – Vaibhav was assaulted was brought by the injured himself with intent to assault the members of the accused party and, in the very same occurrence, the applicant had sustained grievous injuries. Attention of the Court was invited to the injury certificate of the applicant which records a history of assault by

means of a sharp weapon and that the applicant had sustained injuries.

6) The learned Counsel for the applicant further submitted that two of the prosecution witnesses, Rahul and Datta, have stated that the scythe was brought by the injured – Vaibhav and the assault on Vaibhav was perpetrated by another accused, not the applicant. The learned Counsel for the applicant banks upon the panchanama of the CCTV footage which indicates that the injured Vaibhav was assaulted by Devraj.

7) In opposition to this, Mr. Jadhav, the learned APP submitted that the applicant has antecedents. The applicant had reached the scene of the occurrence with preparation to cause grievous hurt. Therefore, the applicant does not deserve to be enlarged on bail.

8) Evidently, in respect of one and the same occurrence, two versions have been reported. The statements of Rahul and Datta reveal that, after the scuffle broke out, the injured Vaibhav had brought a scythe from the work site. Initially, the injured Vaibhav started to give blows by means of the scythe to the members of the accused party. Panchanama of the CCTV footage indicates that after the applicant fell down on the road, injured

Vaibhav and witness Datta started to give blows by means of scythe and Bambu, respectively. After a while, the injured was assaulted by means of the same scythe.

9) In the aforesaid view of the matter, the question as to who was the aggressor warrants adjudication at the trial. Prima facie, the material does not indicate that the injuries suffered by Vaibhav can be attributed to the assault perpetrated by the applicant. The injury certificate of the applicant prima facie indicates that the counter version offered by the applicant competes in probability.

10) In the circumstances, a prima facie case is made out to exercise discretion in favour of the applicant.

11) Hence, the following order.

: O R D E R :

(i) The application stands allowed.

(ii) The applicant be released on bail in CR No. 802 of 2023, registered with Kandivali Police Station, for the offences punishable under Sections 307, 324, 504, 141, 143, 147 and 149 of the Indian Penal Code, 1860, Section 135 read with Section 37 (1) of the Maharashtra Police Act, 1951 and Sections 4 and 25 of the Arms Act, 1959, on

furnishing a P.R. Bond in the sum of Rs.30,000/- with one or two sureties in the like amount, to the satisfaction of the trial Court.

(iii) The applicant shall mark his presence at Kandivali Police Station on the first Monday of every alternate month between 10.00 am to 1.00 pm for a period of two years or till conclusion of trial, whichever is earlier.

(iv) The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to the first informant and any of the persons acquainted with the facts of the case.

(v) The applicant shall not indulge in the identical activity for which he has been arraigned in this case.

(vi) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of 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.

[N. J. JAMADAR, J.]