

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1727 OF 2024

Akash Amerjeet Gupta ...Applicant
vs.
The State of Maharashtra ...Respondent

Ms. Tahera Qureshi, for the Applicant.
Mr. Prashant Jadhav, APP, for the Respondent/State.
Mr. R.P. Mawale, Ambernath police station.

CORAM : N. J. JAMADAR, J.

DATE : APRIL 22, 2024

P.C.:

1. Heard the learned counsel for the parties.
2. The applicant, who is arraigned in C.R. No. 273 of 2023 registered with Ambernath police station for the offences punishable under sections 120-B and 307 read with 34 of Indian Penal Code, 1860 and section 37(1) read with 135 of Maharashtra Police Act, 1951, seeks to be enlarged on bail.
3. The first informant had a dispute with his brother Amerjeet over the ancestral property. The applicant is the son of Amarjet. Amerjeet had received compensation upon the acquisition of the ancestral property at Gorakhpur and did not distribute the same equally amongst Amerjeet, the first informant and their another brother Harinath. On the said count, there were frequent quarrels between the first informant, on the one part, and Amerjeet and his sons, on the other part. Reports were also lodged with the police.

4. On 10th May, 2023 at about 10 pm while the first informant was sitting in front of the shop of Lodhe Chavan at Mahatma Phule Nagar, the applicant along with a child in conflict with law were standing at a distance of 10-15 ft. The applicant allegedly instigated the child in conflict with law to assault the first informant. Thereupon, the child in conflict with law unleashed blows by means of knife on the neck and hands of the first informant. The applicant allegedly exhorted the child in conflict with law not to spare the first informant. The latter rushed to the house of Umashankar Gupta, to save himself. After having treatment at Central Hospital, Ulhasnagar, the first informant lodged the report.

5. The learned counsel for the applicant submitted that the applicant has been falsely roped in on account of previous enmity. The applicant had not assaulted the first informant. The alleged eye witnesses to the occurrence do not attribute the role of instigation to the applicant. They have merely stated that the applicant was present at the spot when the child in conflict with law assaulted the first informant.

6. In opposition to this, Mr. Jadhav, the learned APP, submitted that the applicant had instigated the child in conflict with law to perpetrate the assault on the first informant. Attention of the Court was invited to the memorandum of disclosure statement made by

the said child in conflict with law, who stated that the applicant had instigated him and another person to assault the first informant by offering to pay Rs. 20,000/-. It was further submitted that the applicant has antecedents. Therefore, the applicant does not deserve to be enlarged on bail.

7. Evidently, the relations between the first informant and his family members, on the one part, and his brother Amerjeet and latter's family members, on the other part, have taken inimical proportion. There have been frequent quarrels. It is trite that enmity is a double edged sword. It furnishes motive for the crime as well as a cause for false implication.

8. In the case at hand the injury certificate prima facie indicates that the first informant had sustained 3 CLWs by means of a sharp weapon. The role attributed to the applicant is that of instigating the child in conflict with law, to perpetrate the murderous of assault on the first informant. The applicant was allegedly present when the child in conflict with law assaulted the first informant by means of knife, at the instance of the applicant.

9. The statement of Sangita Gupta throws light on the nature of the occurrence. Sangita Gupta stated that the child in conflict with law assaulted the first informant. Persons had gathered at the place of occurrence. The applicant was also present thereat. However,

Sangeeta Gupta does not attribute to the applicant the role of instigation and giving exhortation to the child in conflict with law. Asha Gupta, in whose house the first informant entered to rescue himself, also does not attribute the role of instigation to the applicant. She states about the presence of the applicant at the time of the alleged occurrence.

10. In these circumstances to, what extent the discovery made by the child in conflict with law can be used against the applicant would be a matter for adjudication at the trial. The disclosure statement of the child in conflict with law, as regards the role of the applicant does not prima facie appear to be distinctly related to the fact thereby discovered.

11. In the aforesaid view of the matter, having regard to the facts that the relations between the parties were inimical and the investigation is complete for all intent and purpose and the charge sheet has been lodged, I am inclined to exercise discretion in favour of the applicant.

12. So far as the antecedents, it appears that C.R. No. 272 of 2017 has been registered pursuant to report lodged by the first informant. In any event, the apprehension on the part of the prosecution can be taken care of by imposing conditions.

Hence, the following order.

ORDER

- 1] The application stands allowed.
- 2] The applicant be released on bail in C.R. No.273 of 2023 registered with Ambernath police station, on furnishing a P.R. Bond of Rs. 30,000/- with one or more sureties in the like amount.
- 3] The applicant shall mark his presence at Ambernath police station on the first Monday of every month between 11 am to 1 pm for a period of three years or till conclusion of the trial, whichever is earlier.
- 4] The applicant shall not enter the limits of Ambernath police station for a period of three years or till conclusion of trial whichever is earlier, except for marking his presence at Ambernath police station.
- 5] The applicant shall not tamper with the prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses or any person acquainted with the facts of the case.
- 6] 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.
- 7] The applicant shall regularly attend the proceedings before

the jurisdictional Court.

8] 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.)