

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

BAIL APPLICATION NO. 1668 OF 2023

Kanhaiyalal Shivilal Gadari	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr. Sudeep Pasbola with Ayush Pasbola, for Applicant.

Mrs. Geeta P. Mulekar, APP for State/Respondent.

CORAM:- N. J. JAMADAR, J.

DATED:- 2nd JANUARY, 2024

PC:-

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

2) This application is preferred for bail in connection with CR No. 610 of 2022 registered with Narpoli police station, for the offences punishable under Sections 307, 326 and 506 of the Indian Penal Code, 1860 ("the Penal Code").

3) The first informant deals in the business of steel fabrication. The applicant was working on the ice cream handcart of the first informant. Upon an order being placed by the applicant, the first informant had manufactured an ice cream handcart for Rs.1,65,000/-. The applicant had paid Rs.65,000/-

and had agreed to pay the balance amount while taking delivery of the ice cream handcart.

4) On 26th October, 2022, the applicant allegedly came to the workshop of the first informant and demanded the delivery of the ice cream handcart. When the first informant insisted on the payment of the balance amount, the applicant raked up a quarrel. In the altercation that ensued, the applicant allegedly picked up a steel rod and gave blows on the head and right side of the face of the first informant.

5) The learned Counsel for the applicant submitted that there was no pre-meditation. The incident occurred at the spur of the moment. The investigation is complete and the charge-sheet has been lodged. Therefore, the applicant deserves the exercise of discretion.

6) The learned APP resisted the prayer for bail. It was submitted that the injury certificate issued by Unnati Hospital indicates that the first informant was critical when he was admitted.

7) From the perusal of the FIR, it becomes evident that the applicant was working with the first informant and desired to start an ice cream handcart business and placed an order for the manufacture of the ice cream handcart. It seems a dispute arose

as the applicant insisted on the delivery of the ice cream handcart without the payment of the balance consideration. An altercation seems to have ensued.

8) Prima facie, it appears that the applicant was initially unarmed. As there was altercation between the applicant and the first informant, the applicant seems to have picked up a steel rod, which was lying in the workshop of the first informant. In the circumstances, whether there was intent to commit murder of the first informant would be a matter for adjudication at the trial. The applicant has been in custody for almost a year. The investigation is complete for all intent and purpose and charge-sheet has been filed. It is unlikely that the trial would conclude within a reasonable period.

9) I am, therefore, impelled to exercise the discretion in favour of the applicant.

10) Hence, the following order:

: O R D E R :

(i) The application stands allowed.

(ii) The applicant Kanhaiyalal Shivilal Gadari be released on bail in CR No. 610 of 2022 registered with Narpoli police station, for the offences punishable under

Sections 307, 326 and 506 of the Indian Penal Code, 1860, 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 learned Sessions Judge.

(iii) The applicant shall mark his presence at the concerned Police Station on the first Monday of every month between 10.00 am to 12.00 noon 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) 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 observations made hereinabove.

[N. J. JAMADAR, J.]