



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1569 OF 2023**

Yusuf @ Jai Yakub Ansari
versus
The State of Maharashtra

... Applicant
... Respondent

Dr. Uday P. Warunjikar with Ms. Sonali R. Chavan, for Applicant.
Mrs. Supriya Kak, APP for State.

CORAM: N.J.JAMADAR, J.

DATE : 24 APRIL 2024

P.C.

1. Heard the learned Counsel for the parties.
2. The applicant, who is arraigned in C.R.No.130 of 2020 registered with Ghatkopar Police Station for the offences punishable under Sections 302, 307, 143, 147, 148, 149 of the Indian Penal Code, Section 135 read with Section 37(1) of the Maharashtra Police Act and Section 4, 25 of the Arms Act, 1959, has preferred this application to enlarge him on bail.
3. Sanjay Krishna Gotal, the first informant, lodged a report to the effect that on 16 February 2020 at 9.00 p.m., when he came out of home, he noticed that the applicant and co-accused Vijay Ansari, Mangesh Agarwal, Sandesh Agarwal, Rahul Sakpal and Sanjay Ansari were assaulting Sushil Sonawane (the deceased) and Amol Dongre by means of sword and sticks. The first informant went to the rescue of Sushil and Amol. The applicant allegedly pelted a tile on the head of Sushil. When the first

informant raised alarm, co-accused Vijay Ansari peleted another tile on the head of the first informant. Mangesh Agarwal assaulted Amol by means of bat. Amol tried to flee away. The applicant attempted a blow by means of a sword on the head of Amol. Amol tried to fend off the blow and suffered blow on his fingers. Two of his fingers were cut off. Suhasini, wife of the first informant, came to his rescue. The applicant allegedly assaulted Suhasini by means of Sword. The applicant threatened to kill anybody who attempted to intervene.

4. Dr. Warunjikar, learned Counsel for the Applicant, submitted that, in fact, it was a case of free fight between two groups. In the assault which was perpetrated by the members of the informant's party, Shamim Banu Shaikh, first informant, her mother Nilofer, brother Wahid, Mangesh Agarwal, and Muskan Khan were assaulted with intent to commit their murder. FIR being C.R.No.131 of 2020 came to be registered for the offences punishable 307, 143, 147, 148 of IPC against the members of the informant's party, including the first informant Sanjay and injured Amol and others.

5. Dr. Warunjikar further submitted that the prosecution case that the applicant was armed with sword and assaulted Amol and Suhasini is not borne out by record. Their injury certificates are not placed on record. Sanjay, the first informant had also sustained simple injuries. PM report indicates that the deceased had not sustained any injury by a sharp weapon. In fact, there is inconsistency in the

prosecution version as to the person who had assaulted the deceased. Therefore, the applicant deserves to be enlarged on bail.

6. Mrs. Supriya Kak, learned APP, countered the submissions on behalf of the applicant. It was urged that there is material to indicate that the applicant had initially assaulted the deceased by means of tile and later had assaulted the other injured by means of sword. Pursuant to the discovery made by the applicant, weapon of offence i.e. sword, came to be recovered. Having regard to the nature of the occurrence and the number of persons who sustained injuries in the said occurrence, a clear case of pre-mediated assault is made out. Therefore, the applicant does not deserve to be enlarged on bail.

7. I have carefully perused the report under Section 173 of the Code of Criminal Procedure and the documents annexed with it, especially the statements of the alleged eye witnesses to the occurrence. First informant has attributed role of assault by means of tile to the applicant. Co-accused Vijay also assaulted the first informant by means of tile. In contrast, there are statements of other witnesses which indicate that co-accused Mangesh @ Manya initially raked up quarrel with Deepak @ DK. Mangesh charged on the person of Pritesh Gontal @ Gondya. The latter pushed Mangesh. At that stage, the applicant and the co-accused came thereat, armed with weapons.

8. Amol Subhash Dongre stated that co-accused Roshan and Bala gave

blows by means of wooden log on the head of Sushil, the deceased. The applicant Jay aimed blow by means of sword on the head of Sushil, which he tried to fend off. Amol suffered a grievous injury on his finger. It was cut off. Minal Mangesh Ghadge stated that the applicant and co-accused Bala gave blows by means of tile on the head of Sushil.

9. At this stage, the Court is not expected to delve deep into the meticulous evaluation of evidence. However, reference to the aforesaid statements is made to indicate that there is prima facie inconsistency as to the accused who assaulted the deceased as well as the weapon by means of which the deceased was assaulted. PM report does not indicate that the deceased had sustained any injury by means of a sharp weapon. There are statements of witnesses to show that two of the co-accused had assaulted deceased Sushil by means of sticks on head. Apart from the applicant, the role of assaulting the deceased by means of tile is attributed to co-accused Bala @ Natya.

10. An endeavour was made to urge that the applicant was armed with sword and assaulted Amol and Suhasini. Both claimed to have sustained injuries on their fingers. Learned APP fairly submitted that the injury certificates of Amol and Suhasini have not been collected and compiled in the chargesheet. Prima facie, the medical evidence, thus, does not support that part of the accusation which attributes the role of assault by means of sword to the applicant.

11. It is in this context, the fact that there was virtually a free fight and a cross case came to be registered on the basis of the report lodged by a member of the accused party, cannot be lost sight of. In a situation of this nature, the question as to which of the party was aggressor may arise for consideration.

12. The applicant has been in custody since 24 February 2020. Having regard to the nature of the occurrence, number of accused and the number of witnesses which the prosecution may be required to examine and the necessity of simultaneous trial of the case and cross case, it is extremely unlikely that the trial can be concluded within a reasonable period. I am, therefore, persuaded to exercise discretion in favour of the applicant.

13. Hence, the following order :

ORDER

(i) The Application stands allowed.

(ii) The Applicant - Yusuf @ Jai Yakub Ansari be released on bail in C.R.No.130 of 2020 registered with Ghatkopar Police Station on furnishing a PR bond in the sum of Rs.30,000/- and one or two sureties in the like amount to the satisfaction of the trial Court.

(iii) The applicant shall not enter the limits of Ghatkopar Police Station for a period of three years or till the conclusion of the trial whichever is earlier, except for marking his presence at Ghatkopar Police Station, Mumbai on first Monday of every

month between 11 am to 1 pm for a period of three years or till the conclusion of the trial, whichever is earlier.

(iv) 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.

(v) 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.

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

(vii) 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 disposed.

(N.J.JAMADAR, J.)