

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2359 OF 2023

Sharik Abdul Gafar Qureshi

...Applicant

vs.

The State of Maharashtra

...Respondent

VISHAL
SUBHASH
PAREKAR

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VISHAL SUBHASH
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Ms. Ashwini Achari i/b. Mr. Taraq Sayed, for the Applicant.

Mr. S.R. Agarkar, APP, for the Respondent/State.

Mr. Dhanwant Chavan, PSI, Nagpada police station.

CORAM : N. J. JAMADAR, J.

DATE : JANUARY 25 2024

P.C.:

1. The applicant, who is arraigned in C.R. No. 92 of 2023 registered with Nagpada police station for the offences punishable under sections 120-B, 302, 307, 363, 323, 504, 506, 141, 142, 143, 145, 146, 147, 148 and 149 of Indian Penal Code, 1860 and sections 4 read with 25 of Arms Act, 1959 and section 37(1) read with 135 of Maharashtra Police Act, 1951 seeks to be enlarged on bail.

2. The prosecution alleges that there were two incidents. First in front of Figo Building, Shuklaji Street, Nagpada. Second at Arab Galli, Nagpada. The applicant is primarily indicted for the second incident of murderous assault by co-accused Ezaj Supariwala at Arab Galli, Nagpada though the prosecution alleges a criminal conspiracy as well.

3. In the first incident, in front of Figo Building, Ezaj Supariwala and his wife, children and brother, who are the co-accused, allegedly raked up a quarrel with the first informant as he took the side of Rihan Qureshi @ Bappa with whom Supariwalas had a dispute. The first informant alleged the wife and children of Supariwala had caught hold of him and Faizan Supariwala assaulted him by means of knife. The first informant's brother Amas Qureshi came to his rescue. The accused assaulted him. Faizan Supariwala unleashed blows by means of knife. Amas Qureshi fell on the ground with bleeding injuries.

4. The first informant alleges the applicant volunteered to take the first informant to J.J.Hospital and made him to pillion ride his motor-cycle. Instead of taking first informant to J.J. Hospital, the applicant took the first informant to Arab Galli, Nagpada. Co-accused Ezaj Supariwala was standing thereat. The applicant made him to alight from the motor-cycle and stood at a distance. Ezaj Supariwala took out a chopper and assaulted the first informant. The first informant took shelter in a utensils shop. Ezaj Supariwala chased him and gave blows by chopper on his head. In the meanwhile, Amas was shifted to J.J.Hospital. He succumbed to the injuries.

5. The learned counsel for the applicant submitted that the applicant has been falsely roped in. He is 19 years of age. He had volunteered to take the first informant to J.J. Hospital. He had no inkling that Ezaj Supariwala was present at the Arab Galli and would assault the first informant. The applicant has been implicated for the sole reason that he took a different route. As crowd had gathered in front of Figo building, the applicant took the first informant through Arab Galli. There was no criminal intent on the part of the applicant.

6. The learned APP submitted that, the fact that the first informant was taken to Arab Galli which was far off from the first scene of occurrence and the said route was not required to be taken for reaching J.J. Hospital and the attendant circumstances of the applicant having made the first informant to alight from the motor-cycle indicate that the applicant was a confederate in the conspiracy.

7. Whether the act of the applicant of taking injured first informant to the hospital was that of a good samaritan or the applicant was also a confederate in the conspiracy to beat the first informant, appears to be the moot question.

8. There are statements of witnesses which indicate that the co-accused Ezaj Supariwala assaulted the first informant at Arab Galli by means of chopper. The shopkeeper, in whose shop the first informant tried to hide himself, has stated that the assailant entered into his shop and tried to assault the first informant. The assailant had given blows by means of chopper on the head and body of the first informant. Somehow the latter rescued himself and ran away.

9. Prima facie, it appears that the first incident of assault on the first informant and his brother Amas had occurred at a place which was close to J.J. Hospital. The applicant, it is alleged, intentionally took a detour and on the pretext of taking the first informant to J.J. Hospital passed through Arab Galli where the accused Ezaj Suparitwalla attacked the first informant. Prima facie, it appears that the route taken by the applicant was relatively a longer one than the route by which the applicant could have taken the first informant to J.J. Hospital, from the place of first incident. Whether the said act was accompanied by the criminal intent or knowledge would be a matter for adjudication.

10. Prima facie, it appears that on account of the assault

perpetrated by the co-accused on the first informant and his brother Amas, the people who had gathered thereat were reluctant to come forward to assist them as, allegedly, the co-accused threatened the persons who tried to intervene. In the initial part of the FIR, the informant asserts that the applicant who was his friend, came forward, out of the crowd, and volunteered to take him to J.J. Hospital. Prima facie, there is no material to indicate that there was a prior meeting of mind between the applicant and the co-accused Ezaj or a larger conspiracy.

11. In the aforesaid view of the matter, the circumstance that the applicant took the first informant by a longer route, may be compatible with the innocence of the applicant. The alleged act of the applicant making the first informant to alight from the motorcycle and standing at a distance after noticing Ezaj Supariwalla, the assailant, sought to be pressed into service as an incriminating circumstance, is required to be appreciated in the light of the age of the applicant, a barely 19 year old boy, and the fact that the manner in which a person would react to a situation where the assailant is about to charge on a person can not be considered in a straight jacket. Different persons react differently to a situation of actual or threatened violence.

12. In the circumstances, having regard to the fact that the investigation is complete, charge sheet has been lodged and the applicant has been in custody for more than a year, coupled with the role attributed to the applicant and his age, I am inclined to exercise the discretion in favour of the applicant.

Hence, the following order.

ORDER

- 1] The application stands allowed.
- 2] The applicant be released on bail in C.R. No. 92 of 2023 registered with Nagpada 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 Nagpada police station on the first Monday of every month between 11 am to 1 pm till framing of charge.
- 4] The applicant shall stay away from the limits of the Nagpada police station for a period of two years or till the framing of the charge whichever is earlier except for the purpose of attending the police station.
- 5] The applicant shall not tamper with the prosecution evidence and give threat or inducement to the 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.)