



Diksha Rane

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

BAIL APPLICATION NO.3737/2022

GANESH @ NEPYA BAPPU ADSUL ..APPLICANT
VS.

THE SENIOR POLICE INSPECTOR & ANR. ..RESPONDENTS

Adv. Mateen Shaikh a/w. Adv. Suresh Jadhav, Adv. Shrinivas Kshirsagar, Adv. Arshad Shaikh, Adv. Jammu Shaikh, Adv. Muskan, Adv. Shirish Shigwan for the applicant.

Smt. Megha Bajoria, APP for the State.

PSI Mahesh A. Fatangare, Yerwada Police Station, Pune City.

CORAM : M. S. KARNIK, J.

DATE : MARCH 20, 2024.

P.C. :

1. Heard learned counsel for the applicant and learned APP for the State.

2. This is an application for bail by Ganesh @ Nepya Bappu Adsul (accused no.10) in respect of the offence punishable under Sections 302, 201, 143, 147, 148, 149, 188, 269, 323 of the Indian Penal Code ("IPC", for short), under section 3 of the Prohibition of Contagious Disease Act, section 11 of the Maharashtra Covid Rules, Section 51(b) of the Disaster Management Act, 2005, Section 4 read with 25 of the Arms Act and Section 37(1) read with 135 of the

Maharashtra Police Act and Section 3(1)(i), 3(2) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999 ("MCOC", for short) registered vide C.R. No.1794 of 2020 with Yerwada Police Station. The applicant was arrested on 28/5/2020.

3. By an order dated 4/3/2024, the co-accused 'A' was enlarged on bail by this Court. The relevant portion of the order dated 4/3/2024 reads thus:-

"2. This is an application for bail in respect of the offence punishable under Sections 302, 201, 143, 147, 148, 149, 188, 269, 323 of the Indian Penal Code ("IPC", for short), under section 3 of the Prohibition of Contagious Disease Act, section 11 of the Maharashtra Covid Rules, Section 51(b) of the Disaster Management Act, 2005, Section 4 read with 25 of the Arms Act and Section 37(1) read with 135 of the Maharashtra Police Act and Section 3(1)(i), 3(2) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999 ("MCOC", for short) registered vide C.R. No.1794 of 2020 with Yerwada Police Station. The applicant was arrested on 28/05/2020.

3. For ease of the reference, the order dated 31/08/2023 in respect of the co-accused Saurabh Sambhaji Dolare who was enlarged on bail, can be relied upon which reads thus :

"2. This is an application for bail in respect of the offence punishable under Sections 302, 323, 201, 143, 147, 148, 149, 188, 269 of the Indian Penal Code (hereafter 'IPC' for short) read with Sections 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (hereafter 'MCOC Act' for short) read with Section 4(25) of the Arms Act, registered on 28/5/2020 vide C.R. No.1794/2020 with Yerwada Police

Station, Pune.

3. The applicant is the accused no.16. There are in all 16 accused. Accused No.1 Kunal Kisan Jadhav, accused no.2 Abhishek Narayan Khond, accused no.6 Rajveer Sautara and accused no.12 Ripens Chinappa have been enlarged on bail.

In so far as accused no.1 Kunal Jadhav is concerned, while granting bail, the trial has observed thus:-

“2. The prosecution story is that, one Nitin Kasbe was released from jail on temporary bail on 27.05.2020. The Complainant brought him home from jail and thereafter, accompanied him the place to pay respect to Nihal Londhe- deceased brother-in-law, of the complainant. While returning from the said spot at about 10:45 p.m., the Accused along with some 10-12 persons attacked Nitin Kasbe and the Complainant with deadly weapons and charged upon them. In this attack, the assaulters caused death of Nitin Kasbe. The Complainant has seen many of them attacking Nitin Kasbe. The complainant took Nitin Kasbe to Sassoon Hospital, when saw him lying in pool of blood, but the doctors declared him dead on arrival. Hence, the F.I.R. was lodged against the Accused and all other persons on 28.05.2020.

5. Heard the Advocate for the Accused and the A.P.P. Perused the record. Though the Complainant stated the name of the Accused as one of the members of unlawful assembly to attack Nitin Kasbe, he has not stated as to what specific act of assault was done by the Accused. The Complainant stated that, there was old quarrel between Kunal Chandane and Aakash Kanchile. Having grudge of the same, this attack was planned by the assaulters. The Complainant specifically stated the names of the assaulters who ran behind Nitin Kasbe. The

present Accused was not one of them. The A.P.P. in his reply stated that, the name of the present Accused was told by another Accused Aaksah Kanchile.

6. Admittedly, the present Accused was not carrying any weapon nor he has given any weapon injury to the deceased. The Advocate for the Accused has filed the copy of charge-sheet. Thus, substantial investigation is completed. Though the present Accused has not given any fatal blow to the deceased, but he was part of the unlawful assembly and he has gathered with other Accused persons at one place inspite of imposition regulations Maharashtra under Epidemic Disease COVID-19 Regulations Act and Act, Disaster Management Act. This incident occurred in the month of May 2020, when there was strict lockdown declared by the State Government. Inspite of same, the Accused was out of his house, in public place, making unlawful assembly and fear of spreading disease.”

5. Even the co-accused Abhishek Khond has been released on bail by this Court by an order dated 1/2/2023 in Criminal Bail Application No.1504 of 2022. In paragraph 6 it is observed thus:-

“6. It appears that sessions Court has released some of the co-accused. I have perused the statement of eye witnesses. They have not attributed any specific overt act to the applicant. There are no other criminal antecedents. Though according to the prosecution, the applicant is a member of organized crime syndicate, however, prima-facie, there appears to be no material to that effect. Considering the overall facts and circumstances, I am inclined to release the applicant on bail.

6. The role of the applicant is similar to that of Kunal and Abhishek who have been enlarged on bail.”

5. So far as the applicant is concerned, there is no recovery from him. The applicant has been named in the FIR and by the witnesses. The role of the applicant is of pelting stones. One of the witness says that the applicant assaulted the deceased with stones. This statement is recorded almost after 2 months from the date of the incident. The applicant is in custody from 28/05/2020 for more than 3 years and 9 months. The charge has not been framed. In my opinion, in the facts of this case and also on parity the applicant can be enlarged on bail. I am satisfied that the rigours of section 21(4) of MCOA Act can be overcome as there are reasonable grounds for believing that the applicant is not guilty of the offence. In view of the stringent conditions, I propose to impose, it is unlikely the applicant will commit any offence while on bail.

6. Learned APP while opposing the application for bail on merits also submitted that there are 6 criminal antecedents reported against the applicant to his discredit. One of the offence is under Section 302 of the IPC apart from the present offence. In my view, though there are criminal antecedents reported against the applicant which by itself should not be a reason to deprive the applicant the facility of bail. While enlarging him on bail, I propose to impose stringent conditions. Learned counsel for the applicant on instructions submitted that the applicant will not reside within the area of Pune district till the conclusion of trial. Statement is accepted. The applicant does not appear to be a flight risk. The investigation is complete. The charge-sheet has been filed.”

4. Learned APP though opposed the application for bail, I find that the role of the present applicant is at par with the co-accused ‘A’ who has been enlarged on bail. The applicant

is in custody for more than three years and nine months with no possibility of the trial concluding any time soon. The investigation is complete. The charge-sheet has been filed. The applicant does not appear to be a flight risk. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant- Ganesh @ Nepya Bappu Adsul in connection with C.R. No.1794 of 2020 registered with Yerwada Police Station, Pune shall be released on bail on his furnishing P.R. Bond of Rs.50,000/- with one or more local sureties in the like amount.
- (c) The applicant shall report to the police station which is nearest to the place of his residence while residing outside Pune District once in a month on every first Wednesday of the month between 11.00 a.m. and 1.00 p.m.
- (d) The applicant shall inform the trial Court as well as the investigating officer the contact details as well as residential address while residing outside Pune District.
- (e) 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. The applicant shall not tamper with evidence.

(f) Except for attending the trial and for the purpose of reporting to the Investigating Officer, the applicant shall not enter Pune District after being released on bail, till the trial concludes.

(g) The applicant shall attend the trial regularly and shall not take unnecessary adjournments.

(h) The applicant shall surrender his passport, if any, to the investigating officer. If the applicant does not have passport, he shall file the affidavit to that effect.

5. The application is disposed of.

(M. S. KARNIK, J.)