



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3122 OF 2023**

Siddhesh Shantaram Dagale

... Applicant

versus

The State of Maharashtra

... Respondent

Mr. Nikhil Wadikar i/by Ms. Sejal Jain, for Applicant.

Mr. S.R.Agarkar, APP for State.

Mr. Dnyaneshwar N. Ladse, PSI Mulund Police Station present.

CORAM: N.J.JAMADAR, J.

DATE : 24 JANUARY 2024

P.C.

1. Heard the learned Counsel for the parties.
2. This is an application for bail in Sessions Case No.1422 of 2019 arising out of C.R.No.174 of 2019 registered with Mulund Police Station for the offences punishable under Sections 302, 307, 326, 504, 506 read with Section 34 of the Indian Penal Code.
3. The first informant is a maternal cousin of the applicant. The house of the applicant which was adjacent to the house of the first informant, was demolished by the corporation in an anti-encroachment drive. The applicant used to allegedly move around with rowdy people.
4. On 25 April 2019 at about 1.30 a.m., the applicant and Suraj Salve called the first informant in front of his house on the pretext that they wished to have a

meeting. The applicant allegedly charged upon the first informant on the ground that the house of the applicant was demolished on account of a complaint made by the first informant.

5. Altercation ensued. Dnyanesh Gurav, deceased, Vishal Bande, Suraj Gaikwad and other tried to intervene. The applicant and co-accused Suraj allegedly picked up sticks which were lying at the spot and assaulted the first informant and the deceased. It is alleged that the applicant and co-accused Suraj gave blows by means of sticks on the head of the deceased. He fell on the ground. The applicant had also assaulted the first informant by means of stick on his leg. Suraj gave blows on the head of the first informant. They were shifted to the hospital. Eventually, the deceased succumbed to the injuries.

6. Learned Counsel for the applicant submitted that the applicant is in custody since 19 May 2019. The evidence of the first witness is still being recorded and it is unlikely that the trial can be concluded within a reasonable period. Learned Counsel further submitted that the incident had occurred at the spur of the moment and there was no pre-meditation. In any event, the offence would not fall within the dragnet of Section 302 of IPC.

7. Learned APP resisted the prayer for bail. Inviting the attention of the Court to the injuries sustained by the deceased, it was submitted that the applicant had the requisite mental state to cause death of the deceased.

8. I have perused the report under Section 173 of the Code of Criminal Procedure and the documents annexed with it. From the perusal of the supplementary statement of the first informant dated 27 April 2019, it becomes evident that initially altercation was between the applicant and the first informant over the demolition of the applicant's premises by the Municipal Corporation. It appears that the altercation led to a fight. The deceased along with other friends of the first informant came to his rescue. Thereupon, fight broke out. Prima facie, it appears that the applicant and the co-accused were initially unarmed. They picked up sticks which were lying at the spot.

9. I have perused the memorandum of disclosure statement purportedly made by the accused leading to the recovery of the weapon of offence. The Stick which was recovered, was having a length of 22 inches and width of 2 inches. Prima facie, it does not appear that the applicant and co-accused picked up any deadly weapon.

10. Moreover, Suraj, co-accused has been released on bail. Only two injuries were found on the head of the deceased. In the supplementary statement, the first informant alleged that the applicant as well as co-accused Suraj unleashed blows by means of sticks on the head of the deceased. As the co-accused Suraj, who was also alleged to be one of the assailants, has been released on bail, at this stage, the claim of the applicant for same dispensation, appears justifiable.

11. In the totality of the circumstances, whether the offence would fall within the dragnet of Sections 302 or 304 of IPC would be a matter for adjudication at the trial. The applicant is in custody since more than four and half years and it is unlikely that the trial can be concluded within a reasonable period. I am, thus, inclined to exercise the discretion in favour of the applicant.

9. Hence, the following order :

ORDER

(i) The Application stands allowed.

(ii) The Applicant – Siddhesh Shantaram Dagale be released on bail in C.R.No.174 of 2019 registered with Mulund 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 mark his presence before Mulund Police Station on first Monday of every trimester in between 11 am to 1 pm till the conclusion of the trial.

(iv) The applicant shall not enter the limits of Mulund Police Station till the conclusion of the trial, except for marking the presence as indicated above.

(v) 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.

(vi) 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.

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

(viii) 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.)