

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3351 OF 2023

Gautam Siddharath Dhasal

...Applicant

vs.

The State of Maharashtra

...Respondent

Mr. Viral Mukte a/w. Mr. Arun Rajput, for the Applicant.

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

Mr. Khandagale, API, Dharavi police station.

CORAM : N. J. JAMADAR, J.

DATE : JANUARY 04, 2024

P.C.:

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

2. The applicant who is arraigned in C.R. No. 1001 of 2021 registered with Dharavi police station for the offences punishable under sections 302, 307, 323, 504 and 506(ii) read with 34 of Indian Penal Code, 1860 seeks to be enlarged on bail.

3. The indictment against the applicant and the co-accused is that on the night intervening 17th and 18th December, 2021, on account of a quarrel which had taken place at about 11.13 pm on 17th December, 2021, the applicant and the co-accused Prasaht Kunchikorve and Avinash Baraskale had abused and assaulted the deceased. It is alleged that the co-accused Avinash Baraskale had assaulted the deceased by means of cement block. The said accused picked up the cement block lying on the spot and gave blows on the

head and face of the deceased. The applicant and the co-accused Prashant Kunchikurve allegedly assaulted the deceased by means of fist blows.

4. The learned counsel for the applicant invited the attention of the Court to an order dated 27th January, 2023 in BA No. 3026 of 2022 whereby Prashant Kunchikurve, the co-accused, came to be released on bail. The learned counsel for the applicant submitted that the applicant is similarly circumstanced and thus he is entitled to the same dispensation, on the ground of parity. In the said order, this Court inter alia noted that the co-accused Prashant Kunchikurve appeared to have assaulted the deceased by means of fist blows.

5. The learned counsel for the applicant further submitted that in the FIR, which was lodged by Jelu Hanaya, who had allegedly witnessed the occurrence, the applicant was not named. It is in the statement of one of the witnesses namely, Vishal Pol that the applicant and co-accused Prashant Kunchikurve were named as assailants.

6. I have perused the FIR as well as the statements of witnesses. In the FIR the first informant alleged that only one assailant had assaulted the deceased. The said assailant had picked up a cement block and gave blows on the face and head of the deceased. In the

statement of Vishal Pol, though there is a reference to the incident which had occurred at about 11.30 pm on 17th December, 2021 indicating the presence of the applicant and the co-accused, yet, the role attributed to the applicant is that of assaulting the deceased by means of fist blows. It appears that there were two incidents one at 11.30 pm and second post mid night. Prima facie in the FIR only one assailant was attributed with the role of assault by means of cement block. FIR does not refer to the presence of the co-assailants.

7. The learned APP fairly submitted that the role of the applicant appears to be similar to that of Prashant Kunchikurve who has been released on bail.

8. The applicant has been in custody since 8th May, 2023. The investigation is complete. Charge sheet has been lodged. Prima facie case to exercise the discretion in favour of the applicant is made out. I am, therefore, inclined to release the applicant on bail.

Hence, the following order.

ORDER

1] The application is allowed.

2] The applicant Gautam Siddharath Dhasal be released on bail in C.R. No.1001 of 2021 registered with Dharavi 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 Dharavi police station on the first Monday of every alternate month in between 11 am to 1 pm till framing of charge.

4] The applicant shall not tamper with the prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses or any person acquainted with the facts of the case.

5] 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.

6] The applicant shall regularly attend the proceedings before the jurisdictional Court.

7] 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.)