

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3955 OF 2023

SANTOSH
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Nilesh Vijay Ubale ...Applicant

Versus

The State of Maharashtra ...Respondent

WITH

BAIL APPLICATION NO. 1432 OF 2023

Tushar Ashok Doke ...Applicant

Versus

The State of Maharashtra ...Respondent

Mr. Rahman Khan, a/w Mushtaq Shaih, for the Applicant in
BA/1432/2023.

Mr. Devendra Patil, for the Applicant in BA/3955/2023.

Mrs. Geeta Mulekar, APP for the State/Respondent.

CORAM: N. J. JAMADAR, J.

DATED: 25th JANUARY, 2024

ORDER:-

1. Heard the learned Counsel for the parties.
2. The applicants, who are arraigned in CR No.646 of 2022 registered with Bhandup Police Station, Mumbai, for the offences punishable under Sections 120B, 307, 326, 324, 143, 147 and 149 of the Indian Penal Code, 1860 ("the Penal Code"), Section Section 37(1) read with Section 135 of the Maharashtra Police Act, 1959 and Section 4 read with

Section 25 of the Indian Arms Act, seek to be enlarged on bail.

3. Ratnaraj Baramati, the first informant, lodged a report with the allegations that on 13th November, 2023 at about 11.00 pm while he was with his friend Sandesh, in front of Amar Medicals, the applicant and the co-accused Umesh Tangadpalli, Rajesh Tangadpalli, Nilesh Ubale, Sandesh Ubale and their 7 to 8 associates accosted them. The applicants and the co-accused formed an unlawful assembly. They were armed with sticks and swords. In prosecution of the common object of the unlawful assembly, the applicant and co-accused allegedly perpetrated assault on the first informant and his friend Sandesh Ubale. Umesh Tangadpalli assaulted the first informant by means of a Sword. He fell down. Thereupon Umesh Tangadpalli, Rajesh Tangadpalli, Nilesh Ubale and Sandesh Ubale unleashed blows by means of sword on Sandesh. The first informant rescued himself. He was taken to Fortis Hospital. Sandesh Hiwale was thereafter allegedly assaulted by the applicant and co-accused Umesh Tangadpalli. He was also admitted to Agrawal Hospital, Mulund.

4. The learned Counsel for the applicant submitted that the injury certificates of the first informant and injured Sandesh Hiwale indicate the presence of the applicant Nilesh Ubale at the scene of occurrence. On account of previous enmity the applicant has been falsely roped in alongwith his brother Sadesh. Attention of the Court was invited to the crimes which has been registered against injured Sandesh Hiwale, in few of which cases, the applicant Nilesh Ubale is stated to be an injured witness.

5. The learned Counsel for the applicant Tushar Dhoke in BA/1421/2023 submitted that the first informant has not named the applicant Tushar. Injured Sandesh Hivale has made a general and omnibus allegation against the applicant Tushar that he was also a member of the unlawful assembly and assaulted the first informant by means of sword.

6. The learned APP countered the submissions on behalf of the applicants. It was submitted that sword have been recovered pursuant to the discovery made by the applicants Nilesh and Tushar. Though the first informant had sustained simple injuries yet, the injuries were caused by a sharp weapon. It was thus urged that the applicants do not deserve the relief of bail.

7. So far as the applicant Nilesh, the first informant has attributed role of assault by means of sword alongwith the co-accused, after he was initially assaulted by Umesh by means of a sword. When the first informant fell down, he claimed to have sustained injuries on his legs. The first informant does not claim that the applicant Nilesh had assaulted him by means of sword. Sandesh, on his part, alleged that initially he was assaulted by Umesh by means of sword and Pawan stabbed him with chopper. Sandesh alleged that when the first informant came to his rescue, the applicant Nilesh, Tushar and co-accused Umesh Tangadpalli and Rajesh Ubale assaulted him by means of sword. *Prima facie*, that role was not attributed to the applicants and co-accused except Umesh Tangadpalli by the first informant.

8. Sandesh further alleged that the applicant Nilesh had assaulted him by means of sword on his back. The injury certificate does not indicate that the injured Sandesh Hivale had sustained any injury.

9. Undoubtedly, there is material to indicate that the applicants were allegedly members of an unlawful assembly. However, when a person is sought to be roped in by invoking the principle of constructive criminality under Section 149 of

the Code of Criminal Procedure, the individual role which bears upon the entitlement to bail, deserves to be taken into account.

10. *Prima facie*, no definite overt act appears to have been attributed to Tushar. There is a general allegation that Tushar was also armed with sword. The injury certificate does not indicate that the injured Sandesh had sustained the injury, which was allegedly inflicted by Nilesh.

11. In the aforesaid view of the matter, a *prima facie* case to exercise the discretion is made out. Investigation is complete. Charge sheet has been lodged. The applicant Tushar is in custody since 14th November, 2022 and the applicant Nilesh is in custody since 17th November, 2022. In the backdrop of the nature of the accusation, it is unlikely that the trial can be completed within a reasonable period.

12. I am, therefore, inclined to exercise the discretion in favour of the applicants and release them on bail subject to conditions.

13. Hence the following order:

: O R D E R :

(i) Applications stand allowed.

- (ii) Nilesh Vijay Ubale, applicant in BA/3955/2023, and Tushar Ashok Doke, applicant in BA/1432/2023, be released on bail in CR No.646 of 2022 registered with Bhandup Police Station, Mumbai, on furnishing a P.R. Bond of Rs.30,000/-, each, with one or more sureties in the like amount.
- (iii) The applicants shall mark their presence at the Bhandup Police Station, Mumbai, on the first Monday of every month in between 10.00 am. to 12.00 noon for the period of two years or till the framing of the charge, whichever is earlier.
- (iv) For a period of one year, the applicants shall stay away from the area of Bhandup Police Station.
- (v) The applicants shall not tamper with the prosecution evidence. The applicants 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 applicants shall furnish their contact numbers and residential address to the investigating officer and shall keep him updated, in

case there is any change.

- (vii) The applicants 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.

Applications stand disposed.

[N. J. JAMADAR, J.]