

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1301 OF 2024

Ganesh Mahadev Kamble and Anr.	...Applicants
vs.	
The State of Maharashtra	...Respondent

Mr. Raviraj Paramane a/w. Mr. Shubham Singh a/w. DevaShinde,
for the Applicants.

Mr. Prabodhan Yejare (API), Rabale MIDC police station.

Mr. P.P.Jadhav, APP, for the Respondent/State.

CORAM : N. J. JAMADAR, J.

DATE : JUNE 13, 2024

P.C.:

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

2. The applicants, who are arraigned in CR No.399 of 2023
registered with Rabale MIDC Police Station, Navi Mumbai, for the
offences punishable under Sections 307, 326, 325, 324, 323, 504,
506, 143, 144, 145, 146, 147, 148 and 149 of the Indian Penal Code,
1860 ("the Penal Code") and Section 4 read with Section 25 of the
Arms Act, 1959, have preferred this application to enlarge them on
bail.

3. On 9th December, 2023, there was an altercation between
Nikhil, the son of Babu Shinge, and Shahurukh, who were residing
in the neighborhood of Akshay Sonkamble, the first informant. On
10th December, 2023 at about 7.30 p.m. the first informant noticed

that Shahrukh and his friends Vinod Kamble, Babu Kamble, Aakash Chaurasiya, Naushad and Ganesh Kamble and others were assaulting Babu Shinge by fist and kick blows. The first informant went to the rescue of Babu Shinge. Thereupon the applicants and co-accused Suraj, Ramashish Chaurasiya and others started to beat the first informant by means of an iron rod. Deepak Chaurasiya and Babu Kamble assaulted the first informant by means of sword, on the head. As the first informant and others raised alarm, the applicants and co-accused fled away.

4. At the outset, the learned counsel for the applicants submitted that the co-accused Suraj Chaurasiya who was attributed with an identical role has been enlarged on bail by this Court by an order dated 19th April, 2024. Though, in the FIR the role of assault by means of sword has been attributed to the applicant No. 4 Umesh Kamble and sword is shown to have been recovered from the applicant No. 4 Umesh Kamble, yet the injury certificate belies the claim of the first informant that he was assaulted by means of sword. As is it was a case of free fight between two groups, the applicants deserve the same dispensation as has been granted to the co-accused Suraj Chaurasiya.

5. In opposition to this, the learned APP submitted that a specific role of assault by means of iron rod has been attributed to the

applicant Nos. 1 to 3 and assault by means of sword has been attributed to applicant No. 4. There is ample evidence to establish the complicity of the applicants. Moreover, the applicant Nos, 1, 2 and 4 have antecedents.

6. While releasing Suraj Chaurasiya, the co-accused, on bail, this Court has observed, inter alia, as under:-

5] I have perused the material on record. Prima facie it appears that the role of assault by means of sword has been attributed to co-accused Deepak Chaurasiya and Babu Kamble. It does not appear that the first informant and the injured had sustained injuries attributable to the assault perpetrated by the applicant. In any event, it appears that in respect of the one and the same occurrence, two versions were reported leading to registration of a case and cross case. In the circumstance of the case, the questions as to which of the party was the aggressor and whether the applicant was also animated by the common object to commit murder of the first informant and the injured, would warrant adjudication at the trial.

6] Investigation is complete. Charge-sheet has been lodged. The applicant appears to be a 19 year old boy. I am, therefore, inclined to release the applicant on bail.

7. The factors like it was a case of a fight between two groups and in respect of one and the same occurrence, two FIRs have been lodged and the question as to which of the party was the aggressor would arise for adjudication at the trial, apply with equal force to the claim of the applicants for bail.

8. I have perused the injury certificate of the first informant. It does not appear that the first informant had narrated the history of

assault by means of sword by any of the accused. The medical officer has also opined that CLWs sustained by the first informant were caused by blunt object. In this view of the matter, the prosecution case that the informant was assaulted by accused No. 4 by means of a sword, appears to be debatable.

9. In the totality of the circumstances, at this length of time, when the investigation is complete for all intent and purpose, further detention of the applicants does not seem warranted.

10. I have perused the report tendered by learned APP. The antecedents of the applicants do not appear to be such as to disentitle them from release on bail. Hence, I am inclined to allow the application. Hence, the following order.

ORDER

1] The application stands allowed.

2] The applicants be released on bail in CR No. 399 of 2023 registered with Rabale MIDC Police Station, Navi Mumbai, on furnishing a P.R. Bond of Rs. 30,000/- with one or more sureties in the like amount, each.

3] The applicants shall mark their presence at Rabale MIDC Police Station between 10.00 am. to 12.00 noon for the period of three years or till conclusion of the

4] The applicants 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 applicants shall furnish their contact numbers and residential addresses to the investigating officer and shall keep him updated, in case there is any change.

6] The applicants 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 trial Court shall not be influenced by any of the observations made hereinabove.

Application disposed.

(N. J. JAMADAR, J.)