

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2208 OF 2024**

Mihir Keshav Kudatarkar	...	Applicant
versus		
The State of Maharashtra	...	Respondent

Mr. Pawan Mali for Applicant.
Mrs. Mahalaxmi Ganapathy, APP for State.
PI Liladhar Patil, R.A.K. Marg Police Station, Mumbai present.

CORAM: N.J.JAMADAR, J.

DATE : 13 AUGUST 2024

P.C.

1. Heard the learned Counsel for the parties.
2. The applicant who is arraigned in C.R.No.68 of 2023 registered with R.A.K.Marg Police Station, Mumbai, for the offences punishable under Sections 307, 504, 143, 144, 145, 147, 148, 149 of the Indian Penal Code and Sections 37(1) read with 135 of the Maharashtra Police Act and Section 4 read with Section 27 of the Arms Act, 1959, has preferred this application to enlarge him on bail.
3. On 6 February 2023, near Wadala Market, Mumbai, there was an altercation between Vivek Sunil Waje – first informant and Sahil Mandavkar (A3). The latter had threatened the first informant with dire consequences. On

14 February 2023 at about 9.15 p.m., near Sahakar Nagar, Wadala, Mumbai, Sahil (A3) and Kunal Pagade (A2), Mihir Kudtarkar – Applicant (A4) and other two co-accused, accosted the first informant. Sahil (A3) raked up quarrel with the first informant. Kunal Pagade (A2) gave blows by means of knife on the back of the first informant. As the first informant raised alarm, Sahil (A3) and the applicant also whipped out knives and unleashed blows on the first informant. The latter tried to fend off the blows and sustained injuries on the chest, back and hands. As persons rushed to the rescue of the first informant, the applicant and co-accused threatened those persons by pointing the weapons with which they were armed. Thereafter, the applicant and co-accused fled away on the motorcycles.

4. The learned Counsel for the Applicant submitted that the applicant has been in custody since 17 February 2023. An offence punishable under Section 307 of IPC cannot be said to have been prima facie made out. Inviting attention of the Court to the injury certificate of the first informant, which indicates that the latter had sustained only one grievous injury i.e. tendon injury on the left index finger and other simple injuries, the learned Counsel for the Applicant submitted that even if the prosecution case is taken at par, the offence punishable under Section 307 of IPC cannot be said to have been prima facie

made out.

5. It was submitted that the applicant has been in custody since 17 February 2023. By an order dated 30 January 2024, while disposing of BA No.3704 of 2023 preferred by Sahil (A3), this Court had granted liberty to the said co-accused to revive the prayer for bail in the event the charge was not framed within a period of six months thereof. Mr. Mali submitted that charge has yet not been framed. It was further submitted that it is extremely unlikely that the trial can be commenced and concluded within a reasonable period. Thus, having regard to the period of incarceration and the age of the applicant, the Court may exercise discretion in favour of the applicant.

6. Learned APP countered the submissions on behalf of the Applicant. It was urged that the applicant committed the offences by visiting the said locality in breach of an externment order under Section 55(1) of the Maharashtra Police Act, 1951. The applicant has been habitually indulging in the offences. Therefore, prohibitory action has been taken against the applicant. Yet, in breach of the externment order, the applicant has committed the offences in question. Hence, the applicant does not deserve exercise of discretion.

7. I have perused the report under Section 173 of the Code and the documents annexed with it. The initial quarrel was between Sahil (A3) and the

first informant. Prima facie, there are allegations that the applicant and co-accused had assaulted the first informant by means of knives. However, the nature of the injuries sustained by the first informant assumes significance. The injury certificate (Exhibit C) indicates that the first informant had sustained CLW and tendon injury. Except tendon injury, all the CLWs were designated as simple injuries. The role of assault by means of knife has been attributed to three members of the alleged unlawful assembly.

8. In the backdrop of the nature of the injuries suffered by the first informant, the question as to whether an offence punishable under Section 307 of IPC is made out, would be a matter for adjudication at the trial. The applicant is a young boy of 20 years. Indeed, the material on record indicates that the applicant visited the said locality in breach of the externment order and committed the alleged offences in prosecution of the common object of the unlawful assembly.

9. Nonetheless, the period of incarceration of one and half years as an under-trial prisoner with bleak possibility of expeditious conclusion of the trial deserves to be kept in view. Likewise, the fact that the applicant is 20 years of age also weighs in the exercise of discretion. The apprehension on the part of the prosecution can be taken care of by imposing stringent conditions. I am,

therefore, inclined to exercise discretion in favour of the applicant.

ORDER

(i) The Application stands allowed.

(ii) The Applicant – Mihir Keshav Kudatarkar be released on bail in C.R.No.68 of 2023 registered with R.A.K. Marg Police Station, Mumbai, 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 not enter the limits of Mumbai City and Mumbai Suburban District for a period of two years from the date of his release from prison. During the said period of two years, the applicant shall mark his presence before Panvel City Police Station on the first Monday of every alternate month between 11.00 a.m. to 1.00 a.m.. Thereafter, the applicant shall mark his presence before R.A.K.Marg Police Station on first Monday of every month between 11 am to 1 pm for a period of three years or till the conclusion of the trial, whichever is earlier.

(iv) 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.

(v) 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.

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

(vii) 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.)