

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3552 OF 2022

Sumit Kashinath Gomare ... Applicant

Vs.

State of Maharashtra ... Respondent

WITH

INTERIM APPLICATION NO.2115 OF 2024

IN

BAIL APPLICATION NO.3552 OF 2022

ALONG WITH

BAIL APPLICATION NO.2746 OF 2024

Barkya Kashinath Gomare ... Applicant

Vs.

State of Maharashtra ... Respondent

ALONG WITH

BAIL APPLICATION NO.3708 OF 2022

Kunal Bangali Devman Wankhede ... Applicant

Vs.

State of Maharashtra ... Respondent

Mr. Misbaah Solkar for Applicant in BA/3552/2022.

Mr. Kabul Singh Labana for Applicant in BA/2746/2024.

None for Applicant in BA/3708/2022.

Mr. Sagar R. Agarkar, APP for Respondent-State in all Bail Applications.

Mr. Sagar Tambe for Respondent No.2 in BA/3552/2022 and for Applicant in IA/2115/2024.

Ms. Keral Mehta for Respondent No.2 in BA/3708/2022.

Mr. N B. Gaikwad, PSI, Shivaji Nagar Police Station, Ambernath (E).

CORAM : MANISH PITALE, J.

DATE : AUGUST 22, 2024

P.C. :

. Bail Application Nos.3552 of 2022 and 2746 of 2024 have been moved by accused Nos.1 and 2 as they were arrested on 18.10.2021 in connection with FIR No.0322 of 2021 dated 17.10.2021 registered with

Shivaji Nagar Police Station, District - Thane City, for offences under Sections 307, 504, 506 read with Section 34 of the Indian Penal Code, 1860 (IPC), as also under Sections 37(1) and 135 of the Bombay Police Act, 1951.

2. In the present case, there are five accused persons and three of them are before this Court in these applications. But, there is no representation on behalf of the applicant - Kunal Bangali Devman Wankhede in Bail Application No.3708 of 2022, hence, the same be listed separately on 12.09.2024, High on Board.

3. The other two applicants in Bail Application Nos.3552 of 2022 and 2746 of 2024 are represented by counsel and hence, these applications are taken up for consideration.

4. The informant, in the present case, is the injured victim, who has described the incident in question, wherein he has attributed specific roles to the accused persons. It is claimed that the incident in question, which took place on 17.10.2021 was in the backdrop of an earlier incident dated 15.10.2021, wherein the applicant - Sumit Kashinath Gomare was slapped by the cousin of the informant.

5. The learned counsel appearing on behalf of the applicant - Sumit Kashinath Gomare in Criminal Bail Application No.3552 of 2022 submits that even if the version of the informant is to be taken into consideration, the only role attributed to the said applicant was having held the informant while co-accused Barkya Kashinath Gomare i.e. the applicant in the accompanying bail application assaulted the informant by means of a chopper. It is submitted that the role attributed to the applicant - Sumit Kashinath Gomare is distinguishable from that of the other accused persons and that in any case, there is no recovery from the said accused person. The informant claims to be the only real eye-

witness in the present case and there is scant evidence to support his version, apart from the fact that although the injury was classified as grievous injury, the informant did not require extended treatment for the same. There was a single blow of the chopper, which was not even inflicted by the aforesaid applicant and since he has remained behind bars for almost three years, this Court may consider allowing the application.

6. The learned counsel for the applicant - Barkya Kashinath Gomare in Bail Application No.2746 of 2024 submits that the said applicant has also suffered incarceration for about three years. There was a single injury even if the version of the informant is to be taken into consideration. The informant did not require major treatment and he was discharged in a short period of time. It is submitted that the investigation has been completed, recoveries have been made and charge-sheet is filed, but even the charge is yet to be framed, thereby indicating that the trial will not be completed within a reasonable period of time. No purpose would be served by keeping the said applicant behind bars and this Court may consider enlarging him on bail as he undertakes to abide by the conditions that may be imposed by this Court.

7. On the other hand, the learned APP vehemently opposed the bail applications. He submitted that the informant himself is the injured witness in the present case. The statements of some of the other witnesses also indicate that they have corroborated the version of the informant, inasmuch as the applicant accused Barkya Kashinath Gomare has been identified as the person, who used the weapon to inflict the injury on the vital part of the body of the informant. It is submitted that blood stained clothes were recovered from both the applicants and the weapon of assault was recovered at the behest of Barkya Kashinath Gomare. In the light of the specific role attributed to these two

applicants, it is submitted that no indulgence may be shown. It is brought to the notice of this Court that both the applicants have criminal antecedents, which is an additional factor why this Court may not show any indulgence.

8. The learned counsel appearing for the first informant in Criminal Bail Application No.3552 of 2022 supported the contentions raised by the learned APP, while opposing the bail application.

9. This Court has perused the material on record, including the statement of the informant, leading to registration of the FIR. The informant is the injured person, who has described the role of both the applicants in an elaborate manner. The presence of both the applicants is specifically mentioned in the backdrop of the earlier incident dated 15.10.2021. As regards the incident that led to registration of the FIR, it is stated that the same took place in the afternoon at 3:00 p.m. Since the informant already knew the applicants, he specifically identified them as the assailants. The informant has specifically stated that the applicant - Sumit Kashinath Gomare along with the co-accused Kunal Bangali Devman Wankhede held and restrained him, while the applicant Barkya Kashinath Gomare assaulted the informant by means of a chopper. The assault was in the abdomen of the informant and this co-relates with the injury certificate at page 73 of Bail Application No.2746 of 2024. The description of the injury indicates the nature of the attack and although it is contended on behalf of the applicants that the informant suffered only one injury, three injuries are listed in the injury certificate, one of which is a stab wound on the abdomen and the injury has been classified as grievous hurt.

10. Thus, the role of the applicants in the incident in question, is *prima facie* made out by the statement of the informant. This is supported by the injury certificate, as also statements of a few other

witnesses, who have mentioned the presence of the applicants at the place and time of the incident. The record also shows that blood stained clothes were recovered from both the applicants and that the chopper was recovered from Barkya Kashinath Gomare, thereby further supporting the case of the prosecution. Since the applicants have criminal antecedents, it would not be appropriate to show indulgence to the applicants.

11. In view of the above, Bail Application Nos.3552 of 2022 and 2746 of 2024 are dismissed. However, the trial Court is directed to complete the trial as expeditiously as possible and make an endeavour to complete the same within a year from today.

12. In the event the trial is not completed within the time indicated hereinabove and the delay is not attributable to the applicants, liberty is reserved for them to apply afresh for bail.

13. In the light of the above, Interim Application No.2115 of 2024 filed in Bail Application No.3552 of 2022 also stands disposed of.

(MANISH PITALE, J.)

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