

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3447 OF 2024

Sahil Yashwant Mandavkar	vs.	...Applicant
The State of Maharashtra		...Respondent

Mr. Babu Singh, for the Applicant.
Ms. Mahalaxmi Ganapathy, APP, for the Respondent/State.
Mr. Shekhar Pawar, PSI, RAK Marg police station.

CORAM : N. J. JAMADAR, J.
DATE : SEPTEMBER 11, 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. In fact this is the second application bail. The first B.A. No. 3704 of 2023 was disposed as withdrawn with liberty to the applicant to revive the prayer for bail, in the event the charge was not framed within a period of six months thereof.
4. The Court is informed that the charge has yet not been framed.

5. The learned counsel for the applicant submits that in the intervening period co-accused Mihir Kudatarkar was granted bail by this Court by an order dated 13th August, 2024. The applicant has been in custody since 17th February, 2023. The applicant is, therefore, entitled to be enlarged on bail on the ground of parity as there is not much difference between the role attributed to the applicant and Mihir Kudatarkar.

6. The learned APP resisted the prayer for bail. It was submitted that the applicant is the main accused as the initial altercation was between the first informant and the applicant, and the applicant and co-accused had assaulted the first informant. The learned APP submits that the applicant has antecedents and, therefore, appropriate conditions be imposed in the event the Court is inclined to release the applicant on bail.

7. While releasing the co-accused Mihir, this Court had observed, *inter alia*, as under:-

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.

.... ..

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.

8. The aforesaid reasons which weighed with this Court apply with equal force to the claim of the applicant for bail. Prima facie, there does not appear any qualitative difference between the role attributed to the applicant and the co-accused. Having regard to the injuries sustained by the first informant, the question as to whether an offence punishable under section 307 of the Penal Code can be

said to have been made out, appears to be debatable. The apprehension on the part of the prosecution can be taken care of by imposing conditions.

Hence, the following order.

ORDER

- (i) The Application stands allowed.
- (ii) The Applicant – Sahil Yashwant Mandavkar 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 alternate 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.)