

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.4376 OF 2024

HushamMamun Khan @ UshamMamun Shaikh ... Applicant
Vs.
State of Maharashtra ... Respondent

Mr. M. B. Shirsat a/w. Mr. M. A. Khan for Applicant.
Mr. Balraj B. Kulkarni, APP for Respondent-State.
Mr. S. R. Gadge, PSI, Nehru Nagar Police Station.

CORAM : MANISH PITALE, J.
DATE : DECEMBER 03, 2024

P.C. :

. Heard Mr. Shirsat, learned counsel for the applicant and Mr.Kulkarni, learned APP for the respondent-State.

2. The applicant is seeking bail as he was arrested on 01.06.2024 in connection with FIR No.0271 of 2024 dated 31.05.2024 registered with Nehru Nagar Police Station, Brihanmumbai, for offences under Sections 307, 323, 324 read with 34 of the Indian Penal Code, 1860 (IPC).

3. There are three accused persons in the present case including the applicant. The FIR was registered on the statement of the informant (victim), who claimed that on 30.05.2024, in the afternoon at about 3:30 p.m., the accused persons assaulted him by means of a bamboo stick and knife, resulting in serious injuries. A friend of the informant was with him and he is stated to be an eyewitness.

4. The learned counsel for the applicant submits that the version of the informant, when compared to the version of the alleged eyewitness and thereafter compared to the version given by the informant himself in his subsequent statement, indicate discrepancies and variance, which

must inure to the benefit of the applicant. It is further submitted that in the history given during medical examination, it was claimed that four persons had assaulted the informant, while in the statement leading to registration of the FIR, it is claimed that only three persons had assaulted him. It is further submitted that the investigation is completed and the charge-sheet has been filed on 24.07.2024. It is further submitted that the applicant is a nineteen year old boy and considering his future, this Court may show indulgence to the applicant.

5. The learned APP, on the other hand, submits that in the incident, the victim suffered serious injuries and that the injury certificate shows stab injuries suffered by the victim all over his body. It is submitted that the role of the applicant has been specifically stated and the recovery of the weapon of assault i.e. knife is at the behest of the applicant. On this basis, it is submitted that the application may be dismissed.

6. Having heard the rival submissions, this Court is inclined to allow the application for the following reasons:-

- a. The statement of the informant, leading to registration of the FIR specifically alleges overt act of the applicant in having assaulted the victim (informant) by way of fists and kicks after the co-accused person had already hit the victim on his head by means of a bamboo stick. It is specifically claimed in the aforesaid statement that co-accused Javed had assaulted the victim by means of a knife. But, the alleged eyewitness described the incident in a different manner, alleging that it was the applicant, who had used the knife. Thereafter, on 01.06.2024, the informant (victim) himself changed his version to coincide with the version given by the alleged eyewitness, thereby *prima facie* showing discrepancies in the versions given by the

informant himself at different points in time;

- b. In the history given during medical examination, the informant stated that four known persons had assaulted him by means of bamboo and unknown weapon. The statement leading to registration of the FIR specifically names only three persons. This aspect also indicates some variance in the versions given by the informant (victim) at different points in time;
- c. The recovery of knife, upon which the learned APP places much reliance, is from open land under a tree within the compound of a society. The nature of recovery in such circumstances is also an aspect to be taken into consideration;
- d. The above-stated varied versions about the very same incident given by the informant does create *prima facie* some doubt about the manner in which the incident took place and the role that could be attributed to the applicant in the facts and circumstances of the present case.

7. In view of the above, the application is allowed in the following terms:-

- (A) The applicant shall be released on bail in connection with FIR No.0271 of 2024 dated 31.05.2024 registered with Nehru Nagar Police Station, Brihanmumbai, on furnishing P.R. Bond of Rs.50,000/- with one or two sureties in the like amount;
- (B) The applicant shall appear before the trial Court and he shall cooperate with the trial Court for expeditious disposal of the trial;

- (C) The applicant, upon being released on bail, shall not enter jurisdiction of Nehru Nagar Police Station, during the pendency of the trial;
- (D) The applicant shall not in any mode or manner reach out or get in touch with the first informant during the pendency of the trial;
- (E) The applicant shall not tamper with the evidence of the prosecution. He shall not influence the informant, witnesses or any other person concerned with the case;
- (F) Upon being released on bail, the applicant shall immediately, and in any case within a week, furnish the details of his active mobile number and residential address to the trial Court and update about the same, if there is any change.

8. Needless to say, violation of any of the aforesaid conditions would make the applicant liable to face proceedings for cancellation of bail. It is also clarified that the observations made in this order are limited to the question of grant of bail to the applicant in the present application and that the trial Court shall proceed further, without being influenced by the observations made in this order.

9. The bail application stands disposed of accordingly.

(MANISH PITALE, J.)