

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 5007 OF 2024

Shiva Hiralal Gupta .. Applicant

Versus

State of Maharashtra .. Respondent

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- Mr. Ravishankar Dwivedi a/w Mr. Satish Shukla & Mr. Sainath S. Baji for Applicant
- Ms. Savita M. Yadav, APP for State
- Mr. Manoj N. Kudmate, PSI, Chembur Police Station

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 29, 2025

P. C.:

1. Heard Mr. Dwivedi, learned Advocate for Applicant and Ms. Yadav, learned APP for State.

2. Applicant - accused has filed the present Application for regular bail under Section 439 of the Code of Criminal Procedure, 1973 (for short, "**Cr.PC.**") in connection with Crime No. 192/2024 registered with Chembur Police Station, Mumbai for the offences punishable under Sections 307, 324, 395, 397, 452, 506(2) and 427 of the Indian Penal Code, 1860 (for short, "**IPC**"); under Sections 4 and 25 of the Arms Act, 1959 and under Section 135 of the Bombay Police Act, 1951.

3. Time of the incident is 08:00 p.m. on 13.04.2024 whereas FIR has been lodged at 03:25 a.m. in the intervening night of 13.04.2024

& 14.04.2024. *Prima facie* there is delay of six hours in registration of the FIR which is pointed out by Mr. Dwivedi. There are eight accused whose names are given at page No. 53 of the Application and principal accused i.e. accused No. 1 - Shiva Hiralal Gupta is before me. Incident in question for which FIR is lodged was preceded by one another incident at about 01:00 p.m. in the afternoon. That precursor incident happened to be a quarrel between the teenagers / children of the family of victim namely Dhanawat family and other children in the vicinity while playing in the afternoon of 13.04.2024. That incident was taken seriously and a non-cognizable complaint was lodged by the first informant - Rahul Naresh Dhanawat along with his family members in the police station on the same day. When they returned back after lodging the non-cognizable complaint, there was a verbal altercation and it escalated to a quarrel. That quarrel was quelled after sometime by the neighbour and everybody returned back to their respective houses. However late in the evening at about 08:00 p.m., Applicant along with other accused barged into the house of the first informant and threatened and questioned him as to why he lodged the police complaint for the quarrel which happened in the afternoon between their children. That questioning and threatening by the Applicant escalated into a verbal altercation and fight between the parties. At that time, injured victim Sahil Dhanawat, nephew of the

first informant who was residing in the adjacent room, on hearing the ruckus and chaos came into the first informant's room and attempted to intervene. That intervention was not taken lightly by the Applicant and his associates and it ensued into a full blown fight. It is stated in the FIR that Applicant was armed with a knife and one of his associates i.e. accused No. 2 Aman Shaikh had a bamboo stick in his hand. Though it is stated that there were 7-8 persons with them and only six of them are named apart from accused Nos. 1 and 2, it is not seen that any of the other persons were even armed. It is stated in the FIR that first informant, his relatives and injured Sahil were inflicted with fist and kick blows and accused No. 1 i.e Applicant before me inflicted a blow with the knife on the head of Sahil resultantly injuring him. In so far as accused No. 2 is concerned, allegation against him is that he along with other persons with him inflicted blows by the bamboo stick on other members of the Dhanawat family who attempted to intervene in the fight. Neighbours also gathered due to the ruckus which was created and attempted to intervene. However it is stated that accused No. 1 and his associates thereafter warned them not to intervene. FIR states that after the aforesaid incident first informant went to the Chembur Police Station to lodge the complaint and at the same time Sahil Dhanawat went to hospital to treat his head injury. Medical certificate in respect of the injuries is appended

at page No. 101 of the Application and on reading the same, it is seen that treatment was taken by Sahil Dhanawat at 10:55 p.m. on the same night. Said certificate is issued by the Corporation Hospital and it states that the injuries received are simple injuries which are described as laceration on the head. In so far as witness statements are concerned, it is seen that most of the witness statements are of members of the Dhanawat family who may *prima facie* qualify as interested witnesses. No independent witness statement is recorded. Spot panchanma is at page No. 59 of the Application and it does not reveal the extent of any injury or blood having been found on the spot though it is a detailed panchnama made by the prosecution.

4. Ms. Yadav, learned APP has strongly opposed the Applicant for grant of bail on the ground that Applicant is a habitual criminal and is a member of the gang who collects regular extortion money / hafta from vendors in that area and had created a reign of terror in the area. She would submit that Applicant has 15 antecedents in the past for being indicted in similar type of offences and most of them are punishable under Section 307. Mr. Dwivedi would counter the submissions made by the learned APP by stating that Applicant has been granted anticipatory bail /bail by the concerned Courts in the previous offences. He would in fact urge the Court that previous antecedents should not be taken into consideration while dealing with

the Application for bail and would refer to and rely upon the decision of this Court in the case of *Ramkrushna alias Rajju Vs. State of Maharashtra*¹.

5. After hearing submissions advanced by the learned Advocate for Applicant as also the learned APP, it is *prima facie* seen that Applicant has suffered incarceration for the past 10 months. Applicant is alleged to have inflicted a blow with the knife on the head of Sahir but the injury certificate shows that it is a lacerated wound and all injuries are simple. Interest of justice would be served if stringent conditions are imposed on the Applicant in order to prevent the Applicant from indulging in similar offence in future. His further incarceration is unwarranted. In that view of the matter, present Application is allowed in terms of prayer clause (a) subject to the following terms and conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs. 30,000/- with one or two sureties in the like amount;
- (ii) Applicant shall report to the Investigating Officer of concerned Police Station once every month on third Saturday between 10:00 a.m. to 12:00 p.m. initially for three months and thereafter as and when called;

¹ 2023(1) ABR (Cri) 826

- (iii) Applicant shall not enter the territorial jurisdiction of Chembur Police Station till the conclusion of the trial, except for attending the IO for attendance and Court proceedings. He shall not reside in the jurisdiction of Chembur Police Station until the completion of trial;
- (iv) Applicant shall co-operate with the conduct of trial and attend the Trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if he does so, it will entitle the prosecution to apply for cancellation of this order;
- (v) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (vi) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner;
- (vii) Any infraction of the above conditions shall entail prosecution to seek cancellation of this order.

6. In view of the above directions, Bail Application stands allowed and disposed.

[MILIND N. JADHAV, J.]

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