

(2022) 06 BOM CK 0005

In the Bombay High Court

Case No : Criminal Bail Application No. 1556 Of 2022

Ghanshyam Dinesh Gupta

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 04-06-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 34, 307, 504, 506(ii)

Citation : (2022) 06 BOM CK 0005

Hon'ble Judges : Milind N. Jadhav, J

Bench : Single Bench

Advocate : Umesh R. Mankapure, Rutuja Ambekar

Final Decision : Disposed Of

Judgement

Milind N. Jadhav, J

1. The present Criminal Bail Application is filed for seeking bail under the provisions of Section 439 of the Code of Criminal Procedure (for short "Cr.P.C.") by the Applicant (Accused No.4 in the FIR) in C.R. No. 01/2022 registered with the M.R.A. Marg Police Station, Mumbai for the offences punishable under s. 307, 504, 506(ii) r/w s. 34 of the Indian Penal Code (for short "IPC").

2. According to the prosecution in the intervening night of 31.12.2021 and 01.01.2022 the incident took place. The FIR alleges that :-

(i) The complainant - first informant Suresh Rama Sitapure a contractor went to the area near H.D.F.C. Bank, Hornimon Circle, Next to Starbucks for collecting construction debris along with his labourers and truck at about 4.45 a.m.;

(ii) that when he was supervising the lifting of debris into the truck he was approached by two persons who started abusing him; these two persons further called two other persons and all four of them without any reason assaulted the complainant with a bamboo stick resulting in injuries on his body;

(iii) that thereafter the complainant approached M.R.A. Marg Police Station and lodged the report. Crime was registered and the accused were arrested including the Applicant (accused No. 4).

3. The case of the prosecution is based upon the footage of the incident captured in CCTV wherein the presence of the applicant is proven; further the medical evidence of the injuries sustained by the complainant and the seriousness of the offence and injuries on the body of the first informant are clear to indict the Applicant.

4. Mr. Mankapure, learned counsel appearing for the Applicant submits that the grievousness of the incident is completely misleading as reflected in the FIR. He submits that an altercation took place at about 4.45 a.m. in the early hours of 01.01.2022 when apparently the accused after celebrating the eve of the new year in an inebriated state encountered the complainant and his labourers / staff who had come to lift the debris in the wee hours at the spot of the incident. He submits that the Applicant was never part of the group who had the altercation, but a passerby who intervened in the altercation between the Accused Nos. 1 to 3 and the complaint; that the medical evidence placed on record does not prove involvement of the Applicant. He submits that the chargesheet has been filed and on perusal of the charge-sheet the offence under section 307 IPC cannot be made out against the present Applicant. He submits that the incident occurred in the early hours of 01.01.2022, FIR was registered on 03.01.2022 and the Applicant has been arrested on 05.02.2022. He submits that on 01.01.2022 the complainant lodged a written report of the incident immediately after the incident, perusal of which clearly shows that the complainant had received injuries on his right hand finger, chest and right ear only. He has referred to and relied upon the certificate given by the Sir J.J. Group of Hospitals and Grant Medical College dated 01.01.2022 which states that the complainant was brought to the hospital at 10.00 a.m. by relatives due to an alleged assault by five unknown persons at 5.50 a.m. It states that there was injury to his head, right ear and right hand; he was treated, his hand dressing was done and he was discharged with prescription and medicines. Certificate dated 03.01.2022 has been issued by Sir J.J. Hospital to the Investigating Officer (I.O.) in respect of the complainant stating that he received five injuries, first two being grievous and the remaining three being simple injuries all caused by a wooden stick. The grievous injuries stated in this certificate have dimensions of 2 x 1 x .5 cms and 3 x 1 x 1 cms. He submits that thereafter on 17.01.2022 the complainant visited G.T. Hospital for treatment where it is recorded that he was assaulted by four unknown persons over his head, shoulder, right leg and right hand. After his examination, a certificate has been issued which records that the complainant suffered four simple injuries by a hard and blunt object.

5. It is seen that there are four persons involved in the commission of the present offence who are named as accused. In so far as the Accused Nos. 1 to 3 are concerned, there is a clear description of their clothes worn in the CCTV

footage relied upon by the prosecution; then the fourth person is also seen in the CCTV footage, however there is no description of the clothes worn by the fourth person i.e. the present Applicant. The Applicant has pleaded that at the time of incident at about 5.15 a.m. in the morning, he was passing by the spot of incident when he saw the altercation and skirmish between the other three accused and the complainant. The other three accused were in an inebriated state and were beating the complainant and that is when the Applicant intervened to stop the altercation between them. That apart, another piece of evidence which prima facie can be looked at is that the complainant had received simple injuries; had he received grievous injuries, the complainant would not have been discharged from the hospital after treatment and dressing of the injury.

6. For this the Medico Legal Certificate dated 17.01.2022 of G.T. Hospital annexed at page No. 128 of the Application needs to be scrutinized. The said injury certificate shows that the time of bringing the complainant to the hospital at about 5.50 a.m. in the morning, the assault described by the complainant and as noted in the injury certificate is that four unknown persons beat him with a wooden stick over his head, shoulder, right leg and right hand. The nature of all four injuries is certified as simple injury. This certificate is dated 17.01.2022 which is 16 days after the incident. This shows that the informant was first taken to G.T. Hospital and given treatment for the injuries suffered by him. Thereafter it appears that the informant at about 10 a.m. in the morning went to Sir J.J. Group of Hospitals and Grant Medical College and procured a further certificate after two days on 03.01.2022, inter alia, certifying that out of five injuries two are grievous injuries and sought an opinion of a Specialist Doctor. That certificate dated 03.01.2022 is at page No. 129 of the Application.

7. Admittedly, there is no hospitalization of the complainant with reference to the injuries described in the aforesaid two certificates, there is a clear dichotomy in as much as the nature of the injuries are concerned. The investigation is complete and the prosecution has already filed the chargesheet in the present Application. A plain reading of the chargesheet reveals that after the complainant went to the hospital, he was treated and discharged immediately. The submissions made on behalf of the Applicant are appealing and deserve to be considered. As such no purpose will be served to keep the Applicant behind bars who has been under arrest since 05.02.2022.

8. In view of the above discussion and findings, I am of the considered opinion that the Applicant has made out a case of grant of bail. Hence, the following order is passed:-

(i) The Applicant is released on bail on executing a P.R. bond in the sum of Rs. 20,000/- with one or more sureties in the like amount;

(ii) The Applicant shall give his mobile phone number and his current residential address details to the Investing Officer;

(iii) The Applicant shall attend the concerned Investigating Officer as and when called for;

(iii) The Applicant shall co-operate with the Investigating Agency and shall not tamper with the prosecution evidence / witnesses.

9. In view of the above directions, the Criminal Bail Application stands disposed of.