

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL BAIL APPLICATION NO.257 OF 2015

Mr.Jiju @ Aadila Jamkur Khan ... **Applicant**

V/s.

The State of Maharashtra ... **Respondent**

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Mr.Prashant G. Pandey, Advocate for the Applicant.

Ms.Anamika Malhotra, APP for the Respondent/State.

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CORAM : ABHAY M. THIPSAY J.

DATED : 10TH MARCH 2015

ORAL ORDER :

01. Heard Mr.Pandey, the learned counsel for the applicant. Heard Ms.Malhotra, the learned Additional Public Prosecutor for the respondent/State.

02. The applicant is the accused No.3 in Sessions Case No. 33 of 2014 pending before the Sessions Court at Palghar. The case is in respect of offences punishable under Section 302, 307, 326, 323, 504, 506 r/w. Section 149 of the Indian Penal Code and Sections 143, 147 and 148 of the IPC.

03. The applicant had previously applied for bail. But that

application was withdrawn by the learned counsel for the applicant. At that time, liberty was granted to the applicant to apply afresh for bail, in the event of the trial not commencing within a period of three months from the date of the said order (Criminal Bail Application No.1015 of 2014 decided on 06/08/2014). Now the prayer for bail has been renewed on the ground that the period of three months stipulated by this court is already over, but the trial has not yet commenced.

04. Under these circumstances, I have reconsidered the question of grant of bail to the applicant on merits.

05. The learned counsel for the applicant submits that applicant is only 19 years of age. It is submitted that two brothers of the applicant, who are older than him have already been arrested and are in custody in this very case. It is submitted that though the presence of the accused at the time of incident and his participation is spoken about by the First Informant, no specific role has been attributed to him and it is not even claimed that the applicant was possessing any weapon. It is submitted that in the course of investigation, no weapon could be recovered from the applicant.

06. With the assistance of the learned counsel for the applicant and the learned Additional Public Prosecutor, I have carefully gone through the charge sheet.

07. It is clear that the incident took place as a result of the quarrel that took place between the First Informant – Navin Sanke and the accused No.1-Faijul Khan, who is the brother of the applicant. It appears that there was some altercation and a fight, pursuant to which Faijul Khan asked his friends and relatives to come to the place and assaulted Navin Sanke and his father – Subhash Sanke, who came to rescue Navin Sanke.

08. I have examined the memorandum of the Test Identification Parade. Though some persons claiming to be eye-witnesses have identified the applicant, no precise role has been attributed to the applicant by any of them. In fact, the supplementary statements of the eye-witnesses have not been recorded.

09. The learned Additional Public Prosecutor submitted that the case is of murder and that, therefore, simply because the applicant is in custody for a period of one year, he may not be released on bail. She also submitted that in the event of applicant being released on bail, other accused in this case also would seek bail on the ground of parity and that, this would be prejudicial to a proper trial. She submitted that instead of granting bail, appropriate direction be given to the trial Court to ensure that the trial is expeditiously held.

10. After going through the Roznama of the trial Court, of the various dates, that has been tendered by the learned counsel for the applicant, it is seen that on a number of dates of hearing as fixed by the trial Court, the accused persons were not produced before the trial Court.

11. Undoubtedly, it cannot be said that there exists no *prima faice* case against the applicant, in view of the provisions of Section 149 of the IPC. However, it is also a fact that the applicant is of 19 years old and his role in the alleged offences does not seem to be a major or significant one. It is for this reason that a report from the Probation Officer was called for, at the time of hearing of the applicant's previous application for bail (Application No. 1015 of 2014). In order to be able to refer to the report of the Probation Officer, as was given in that matter, the record and proceedings of the said bail application have been called for, and I have gone through the report of the Probation Officer.

12. It appears that the applicant is staying with his family consisting of his mother and three younger sisters. It, also, is undisputed that two brothers of the applicant: viz.- accused No.1 Faijul Khan and accused No.2 Jamil Khan are already in custody in this very case. It appears that the applicant is from a poor family. Apparently, his family is facing considerable hardship as the applicant and his two brothers are in custody.

13. After considering all the relevant aspects, I am inclined to grant one opportunity to the applicant of availing of liberty. This is particularly because two brothers of the applicant are already in custody. The role attributed to at least one of them appears to be the major one. The apprehension expressed by the learned Additional Public Prosecutor that if the appellant is released on bail, all the other accused in the case would also claim to be entitled to be released on bail, is without basis. It is because the case of each accused would need to be viewed and considered separately depending, *inter alia*, on the role attributed to him, the nature of material by which the allegation against such accused is supported, the factors personal to such accused, etc.

14. It does not appear that the applicant would not be available to face his trial, if released on bail.

15. The application is allowed.

16. The applicant is released on bail in the sum of Rs. 50,000/-, with one surety in like amount, or two sureties in the sum of Rs.25,000/- each, on the following conditions:

- (i) The applicant shall not contact, meet or approach any of the prosecution witnesses, in any manner whatsoever.

- (ii) The applicant shall report to the Boisar Police Station on the first and third Sunday of each calender month till the disposal of the case against him.

17. Any failure on the part of the applicant to report to the police Station, as directed above, shall forthwith be reported by the Officer-in-charge of that police station to the trial Court, which shall take further appropriate action in the matter, by treating this order as if passed by it.

18. The trial Court is directed to expedite the trial and ensure that it is completed within a period of nine months from today.

(ABHAY M. THIPSAY J.)