

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 1846 OF 2018

Maksood Jumman Shaikh .Applicant

Vs.

The State of Maharashtra .Respondent

Mr. Anil Lalla a/w Ms Beerta Bajwa, Ms Aanchal Lalla & Ms Pooja Yadav, Advocate, for the Applicant

Mrs. P. P. Shinde, APP, for the Respondent – State

Mr. Sonawane, Head Constable (B. No. 3445), Thane City present

Mr. Shegar, Police Naik (B. No. 3735), Thane City present

CORAM : REVATI MOHITE DERE, J.

DATE : 04.01.2019

(IN CHAMBER)

P.C.

. Heard learned counsel for the respective parties.

2. This is the second Bail Application. Since the first Bail Application preferred by the Applicant was rejected by this Court (Coram : Revati Mohite Dere, J.) vide Order dated 22.03.2018, the present Application has been placed before this Court.

3. Learned counsel for the Applicant seeks bail on the ground of parity. He submits that subsequently i. e. after the Applicant's first B. A. No. 476 of 2018 was rejected, other co-accused similarly placed as the present Applicant have been enlarged on bail. Learned counsel relied on the Order dated 28.06.2018 passed by this Court (Coram : A. S. Gadkari, J.) in B. A. No. 2745 of 2017 enlarging co-accused – Rejaul Akbar Shaikh on bail as well as the Order dated 29.08.2018 passed by this Court (Coram : Prakash D. Naik, J.) in B. A. No. 1789 of 2018 with B. A. No. 1987 of 2018, enlarging co-accused – Mohammed Manarul Rahul Shaikh and Shahjamal Fajalu Shaikh on bail. Learned counsel for the Applicant has also tendered an Affidavit-cum-undertaking of the Applicant dated 28.12.2018 affirmed before the Superintendent, Thane Central Prison. In the said Affidavit-cum-undertaking, the Applicant has undertaken not to leave the territorial jurisdiction of Mumbai / Thane, without the prior permission of the trial Court and has also undertaken to abide by the conditions that may be imposed upon the Applicant, if enlarged on bail. The Applicant has also undertaken to attend

the trial Court on all the dates of hearing and that he will not tamper with the prosecution witnesses.

4. Learned APP does not dispute the fact that the role of the Applicant is similar to that of co-accused – Rejaul Akbar Shaikh, who has been enlarged on bail by this Court (Coram : A. S. Gadkari, J.) vide Order dated 28.06.2018 passed in B. A. No. 2745 of 2017.

5. According to the prosecution, the incident took place on 22.07.2017, when the accused were committing lurking house trespass, in order to commit theft in Maharashtra Bank, by entering into the adjacent building of Raj Motor Driving School, by breaking open its lock. On receipt of the information, the police apprehended Shahajan Ali and Mohammad Manarul Shaikh and Shahajahan Fajlu Shaikh from the building i. e. Raj Motor Driving School and seized one iron katawani from the possession of two accused i. e. Shahajan Ali and Mohammad Manarul Shaikh. The police also seized one drill machine, iron spanner, one plier, screw driver, gas cutting pipe alongwith regulator, oxygen regulator,

eight fitting clips, T spanner, rubber pipes from the possession of the said accused. It is alleged that co-accused – Sakim Shaikh, who was standing outside and keeping a watch was also apprehended on the spot. It is further alleged that on seeing the police, co-accused – Rejaul Akbar Shaikh, Shaifuddin Rejabali Shaikh, Juganu Khalek Shaikh and the present Applicant, who were sitting in a Swift Dezire Car near the place of the incident fled from the spot. The police chased the said vehicle, pursuant to which, the said accused including the Applicant came to be apprehended near Ghoti Toll Plaza. From the said vehicle, the police seized two oxygen cylinders, one small gas cylinder and a regulator. After the Application was rejected on 22.03.2018, some other co-accused - Rejaul Akbar Shaikh, Mohammed Manarul Rahul Shaikh and Shahjamal Fajalu Shaikh were granted bail by this Court. The Applicant is in custody since 22.07.2017 i. e. for more than a year. He has no antecedents. The Applicant has also filed an Affidavit-cum-undertaking stating therein that he will abide by the conditions that may be imposed upon him, if enlarged on bail and as noted above in para 3.

6. Considering the aforesaid i. e. subsequent enlargement of other co-accused on bail, the aforesaid Application is allowed & the Applicant is released on bail on the ground of parity, on the following terms & conditions :-

O R D E R

(i) The Applicant be enlarged on bail on furnishing P. R. Bond in the sum of **Rs. 25,000/-** with one or more local solvent sureties in the like amount;

(ii) The Applicant shall attend the concerned Police Station, on the **first Saturday of every month**, between **10:00 a. m. to 11:00 a. m.**, till the conclusion of the trial;

(iii) The Applicant shall not tamper with the evidence or attempt to contact, influence the complainant, witnesses or any person concerned with the case;

(iv) The Applicant shall co-operate in the conduct of the trial;

(v) The Applicant **shall not leave the territorial jurisdiction of Mumbai / Thane**, without the prior permission of the trial Court;

(vi) The Applicant shall furnish his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the investing officer of the concerned Police Station and the trial Court;

(vii) The Applicant shall also file an undertaking stating therein that **he will comply with all the aforesaid conditions** i. e. (ii) to (vi) within two weeks of his release.

7. The Application is allowed in the aforesaid terms and is accordingly disposed of.

8. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)