

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

931 BAIL APPLICATION NO.569 OF 2021

SHAHARUKH KHAN KALIM KHAN
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Shri Atmaram J.Patil
APP for Respondent-State : Shri S.P.Sonpawale

...
CORAM : M.G.SEWLIKAR, J.

DATE: 18th August, 2021

PER COURT:-

1. By this application under Section 439 of the Code of Criminal Procedure, applicant is seeking bail.
2. It is alleged in the First Information Report (FIR) that informant is the real brother of the deceased. About one year before the incident, the deceased Raiskhan had a quarrel with the applicant and the applicant had delivered a blow of iron rod on the head of the deceased Raiskhan. An offence has been registered against the applicant on account of the said incident.
3. It is further alleged in the FIR that on 20th August, 2020 at 06:10 p.m., the informant got a telephonic message that the deceased was murdered because of a blow on his head by means

of iron rod. When he reached the spot of the incident, he found the deceased lying in pool of blood. He had head injury. The lady by the name Naushadbee Ibrahim Tadvī with whom the deceased was living was present at the scene of the offence. She told the informant that the applicant, accused Azharkhan Ayubkhan and Rajushah Daudshah committed murder of the deceased. Thereupon offence under Section 302 read with Section 34 of the Indian Penal Code came to be registered against the applicant and two others.

4. Heard Shri A.J.Patil, learned counsel for the applicant and Shri S.P.Sonpawale, learned APP for the respondent-State.

5. Shri Patil, learned counsel for the applicant submitted that the applicant has criminal antecedents but that itself cannot be a ground for rejecting the application for bail. He further submitted that there is delay in lodging the FIR. Police Station is at a short distance from the spot of the incident. There is enmity between witness Naushadbee and accused applicant Shaharukh Khan. To take revenge, this false complaint has been filed. He submitted that Naushadbee claims to be an eye witness. However, her statements under Section 161 and Section 164 of the Code of Criminal Procedure are diagonally opposite with each

other. The applicant had no reason to assault the deceased. Whatever misunderstanding they had, they were cleared by the deceased. This is clear from the statement of Naushadbee. He submitted that all these circumstances indicate towards innocence of the applicant. He submitted that the applicant is behind the bars since more than a year. Considering the peculiar situation created by Covid-19, applicant be released on bail.

6. Shri Sonpawale, learned APP submitted that offence is serious in nature. Applicant has criminal background. He submitted that applicant had robbed the complainant in CR No.1378 of 2019 of mobile. He submits that if the applicant is released on bail, he is likely to commit similar offence again.

7. Charge-sheet has been filed. On perusal of the statement of Naushadbeee Ibrahim Tadvī with whom the deceased was living shows that she saw a crowd of 8 to 10 persons. Three persons were beating one person. Those were applicant, accused Azharkhan and Gulab Shah. Two of them were holding iron rods. When she went to the spot of the incident, she saw her husband lying in a pool of blood. One iron pipe was lying beside him.

8. Statement of Naushadbee under Section 164 of the Code of Criminal Procedure has been recorded by the learned Magistrate. It shows that applicant was beating the deceased. Azharkhan was running away from the spot. Having regard to this, I am not inclined to release the applicant on bail. Hence, the order:

ORDER

- i) Application is dismissed.
- ii) Observations made in this order are restricted to the disposal of this application only. Learned trial Court shall not get influenced by these observations and can come to its independent conclusion.
- iii) Learned trial Court shall expedite the trial.
- iv) If trial is not completed within a period of one year, the applicant can move the Sessions Court for bail. If such an application is filed, the learned Sessions Court shall consider the same on its own merits.
- v) Application is disposed of.

**(M.G.SEWLIKAR)
JUDGE**

SPT