

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1215 / 2020

Akash Swami @ Kumar

Kalya @ Akash Kalya

.....Applicant

V/s.

The State of Maharashtra

....Respondent

* * * *

Mr. Satyaram Gaud, advocate for the applicant.

Smt. Sharmila Kaushik, APP for State.

PSI, M.S. Salvi from Agripada Police Station present.

CORAM : SANDEEP K. SHINDE, J.

Friday, 12th February, 2021.

P.C. :

1. Heard learned Counsel for the applicant and learned APP for State.

2. Applicant-accused in Crime No.257/2018 registered with Agripada Police Station for the offences punishable under Sections 307, 506(II), 323, 504 read with Section 34 of the Indian Penal Code and Section

37(1)(A) and 135 of the Maharashtra Police Act, seeks bail.

3. On 13th November, 2019 when this Court was not inclined to grant bail, Application No. 1776/2019 was withdrawn as dismissed. Present application is therefore the second bail application. Two grounds are raised by the learned Counsel for the applicant.

4. The first ground is that, the applicant has not been provided medical aid and second that, he has been incarcerated since 25th October, 2018 and his right to speedy trial is violated in as much, till date, the trial Court has not framed the charge.

5. So far as grievance about not providing medical aid is concerned, the learned APP has placed before me, Medical Report submitted by the Chief Medical Officer, Mumbai Central Prison, Mumbai. It is dated 9th February, 2021. It reads as under :

“Undertrial prisoner Akash Ganesh Swami is suffering from low backache with weakness in left lower limb.

He was sent to J.J. Hospital. His X-Ray was taken out and found to be minimal scoliosis (spinal deformity)

Medications were provided and advised MRI spine. It is also mentioned that patient is not cooperative hence MRI could not be done.

He is again posted for MRI on 10/02/2021.

His ailment is minor in nature and overall health is stable.”

6. In view of the report, the first ground is rejected.

7. I have perused the FIR and the statement/complaint of the injured. I have no reason to disbelieve or discard the statement of injured, Aakash recorded on 22nd October, 2018. The injuries found on the person of the injured are stab injuries, greivous in nature. Besides, vide memorandum of panchanama

dated 22nd October, 2018, the weapon has been recovered on the disclosure made by the applicant.

8. There are six cognizable offences registered against the applicant including the one under Section 307 of the Indian Penal Code. Besides, ten non-cognizable offences and the proceedings under Section 107 of the Criminal Procedure Code were initiated. Further, in August, 2016, he was externed for two years and during that period, he had committed the offences. Thus, to be stated that, if released on bail, his presence cannot be secured for trial.

9. The offence under Section 307 of the Indian Penal Code is punishable with imprisonment for a term which may extend to 10 years or imprisonment for life.

10. Prima-facie, the evidence shows complicity of the applicant. The application is therefore rejected.

11. It is made clear that, observations made hereinabove, shall be construed as expression of opinion for the purpose of rejecting bail only and the same shall not, in any way, influence the trial in other proceedings.

12. The trial is expedited.

Neeta S.
Sawant

(Sandeep K. Shinde, J.)

Digitally signed by
Neeta S. Sawant
Date: 2021.02.12
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