

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

CRIMINAL BAIL APPLICATION NO. 1358 OF 2020

Mohd. Salim Abdul Khalique Shaikh	 Applicant
Versus	
The State of Maharashtra	 Respondent

Mr. Pankaj S. Pandey for Applicant.
Smt. A. A. Takalkar, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 08th APRIL, 2021

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No. I 560 of 2012 registered at Mumbra police station, under sections 143, 147, 148, 323, 326, 427, 504, 307 r/w. 149 of the Indian Penal Code (for short 'IPC').

2. The trial has progressed quite substantially. The applicant is being tried along with other accused in Sessions Case No.189 of 2013 before the court of Additional Sessions Judge, Thane.

3. The applicant, at the first instance, was granted bail

during pendency of trial. However, he did not attend a few dates in the court from January, 2018 to August, 2018, therefore, his bail was cancelled. His application for bail, subsequently, was rejected on 22/11/2018. Thereafter again he preferred another bail application vide Exh.No.121 in Sessions Case No.189 of 2013 before the Additional Sessions Judge, Thane. Even that application was rejected on 11/11/2019. In that order it was mentioned that the prosecution had assured that, on the next date matter would be argued.

4. Heard Shri. Pankaj Pandey, learned counsel for the applicant and Smt. Takalkar, learned APP for the State.

5. Learned counsel for the applicant submitted that, though the prosecution had assured to complete the trial on the next date after 11/11/2019, the trial did not conclude. In fact, one of the co-accused had applied for recalling of one of the witnesses. Therefore, trial is just dragging on. In this situation, I am considering applicant's bail application, though, trial has progressed quite substantially.

6. The prosecution case is about the incident dated

23/09/2012. There was some quarrel between the first informant Majid and one Ansari. Subsequently, accused Raees Ansari, Mohd. Ansari, Sarfraj Ansari, Ramij Ansari and Mustaq Shaikh came to the informant's shop. The informant Majid was dragged out of his shop. Accused Raju picked up one measuring weight and gave a blow on forehead of the informant's brother Jalal Teli causing serious injuries. On this basis, F.I.R. was lodged and investigation was carried out. During investigation, there was recovery of stump, bat and aforementioned measuring weight from the applicant's house. It is the only evidence against the present applicant. It is not the prosecution case that the applicant was present on the spot and had taken part in the assault. As mentioned earlier, he was granted bail and subsequently his bail was cancelled.

7. Learned counsel for the applicant submitted that, he is 70 years of age and is suffering from various ailments. He submitted that, no offence under section 307 of IPC or any other offence is made out against the present applicant. At the highest, allegations pertain to offence under section 201 of IPC, which is a bailable offence. He further submitted that, during trial, the

panchas to the recovery panchanama concerning the applicant were examined and they did not support the prosecution case. Therefore, there is absolutely no material against the present applicant. He submitted that, though, the applicant should have diligently attended the court case, he could not do so because he was taking treatment for his health issues during that period.

8. Learned APP submitted that, since the trial is reaching its conclusion, at this stage, bail should not be granted to the present applicant. However, she could not point out any role played by the applicant or any non bailable offence attributable to him.

9. I have considered these submissions. I have perused not only charge-sheet, but depositions of witnesses annexed to this application. P. W. 1 Majid Teli, P. W.2 Jalal Teli, P. W. 3 Hamida and P. W. 4 Naim Saiyyed are the eye witnesses. None of them has named the present applicant or has ascribed any role to him or has stated that applicant was present on the spot. Therefore, even for the purpose of section 149 of IPC the applicant cannot be roped in to allege that he could be concerned with commission of offence

either U/s.307 or section 326 of IPC. Though, it can be seen that the victim Jalal had suffered serious injury and had lost vision of his eye, however, this assault is not attributable to the present applicant at all. Only evidence against him in the charge-sheet was about the recovery of stumps, bat, as well as, that particular measuring weight. However, as rightly submitted by learned counsel for the applicant that, it could, at the most be offence under section 201 of IPC. Therefore, considering this fact and situation, there is no justifiable reason to detain the applicant any further. The trial has progressed, but as pointed out by learned counsel for the applicant, there is no possibility that it would reach its conclusion in reasonable period. Even otherwise, there is hardly any material against the present applicant. Therefore, I am inclined to grant bail to the present applicant, though, for a short while he had not attended the court. In that behalf, learned counsel for the applicant states that, the applicant shall attend all the dates in court diligently, unless prevented by reasonable cause.

10. Before parting with this order, it is necessary to refer to an important aspect. As can be seen from the above discussion, the

applicant was detained in custody, though, the allegations against him were pertaining to a bailable offence. Learned counsel for the applicant stated that the applicant has suffered custody in this case for more than four years. In the context of the case, this undoubtedly is unjustified. Learned counsel for the applicant submitted that the applicant had to suffer this period in custody because he did not have access to legal advice because of his poor financial state and lack of awareness about his rights.

The situation is really unfortunate. There are many such prisoners languishing in jail who are unable to approach this court because of the same reasons. It is necessary to address this issue on urgent basis. In this context, the Legal Aid Services Authority of this court is requested to take steps to address this issue. The authority can consider forming of separate panel of advocates who are willing to give legal assistance to prisoners. Those advocates should be experienced and they should be willing to take up this responsibility willingly as a social responsibility. Of course, the authority can consider fixing of their remuneration for their services rendered to the prisoners. The authority can also

consider framing of rules in that behalf.

11. Hence, the following order :

ORDER

- (i) In connection with C.R.No. I 560 of 2012 registered at Mumbra police station, the applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.10,000/- (Rupees Ten Thousand Only) with one or two sureties in the like amount.
- (ii) A copy of this order be given to Legal Aid Services Authority of this court.

(SARANG V. KOTWAL, J.)