

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

**BAIL APPLICATION NO.469 OF 2019
WITH CRIMINAL APPLICATION NO. 1486 OF 2019**

Sadik S/o Bashir Shaikh
Age: Major, Occu: Labour,
R/o: Ganganagar, Tq. Newasa,
District Ahmednagar.

... Applicant

Versus

The State of Maharashtra

... Respondent

**AND
BAIL APPLICATION NO.947 OF 2020
WITH CRIMINAL APPLICATION NO.1757 OF 2020**

Pawan S/o Somnath Narula
Age: Major, Occu: Labour,
R/o: Near Mohniraj Temple,
Tq. Newasa, Dist. Ahmednagar

... Applicant

Versus

The State of Maharashtra

... Respondent

...

Mr. A. K. Bhosale, Advocate for the Applicants
Mr. S. G. Sangle, APP for the Respondents/State
Mr. G. R. Syed, Advocate for the Informant in Criminal Application
No.1486/2019 and Criminal Application No.1757/2020

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**CORAM : SHRIKANT D. KULKARNI, J.
Reserved on : 10th March, 2022
Pronounced on : 14th March, 2022**

FINAL ORDER : -

1. To grant bail is a discretion of the Court, but it needs to be exercised in a judicious manner and according to well settled principles of law.
2. Applicant – Sadik Bashir Shaikh in Bail Application No.469 of 2019 and Applicant - Pawan Somnath Narula in Bail Application No.947 of 2020 are seeking bail by taking aid of Section 439 of the Criminal Procedure Code in connection with Sessions Case No.194 of 2018, which is pending before the Additional Sessions Judge, at Ahmednagar, District Ahmednagar.
3. According to the prosecution case, one Asif Ilayat Khan Pathan lodged F.I.R on 16-09-2013 with Newasa Police Station for causing murder of his cousin, namely, Riyaj Jamshed Pathan a practicing Lawyer. It is stated in the F.I.R. that on 16-09-2013 at about 3:00 pm, first informant along with his cousin i.e. Riyaz Pathan were sitting on the platform under a Neem tree in front of Sub-Registrar Office, Newasa waiting for their turn for registration of their document. One person gave call from the Sub-Registrar Office to the first informant and he just crossed four steps when he heard the voice stating to fire bullets. He turned back and witnessed that Mohan Suresh Lashkare (Accused No.2), Rameshwar Bhagwan Gade

(Accused No.3) and Chauranginath Gorakhnath Lashkare (Accused No.4) had caught-hold both the hands of Advocate Riyaj Pathan. Pawan Somnath Narula (Applicant in Bail Application No.947 of 2020), Sadik Bashir Shaikh (Applicant in Bail Application No.469 of 2019) and Sachin Chandrakant Chavan (Accused No.6) were shouting to fire bullets towards Advocate Riyaj Pathan. Pravin Popat Kharchand (Accused No.1) fired bullets towards the person of Advocate Riyaj Pathan which were hit on his back. Riyaj Pathan fell down when all the accused ran away from the spot. The first informant and other persons picked up injured Advocate Riyaj Pathan and put him in a Jeep and brought him to Rural Hospital, Newasa Phata. As per Doctor's advice, Advocate Riyaj Pathan was taken to Nobel Hospital, at Ahmednagar for further treatment where he was declared dead.

4. On the basis of F.I.R. lodged by Asif ilayat Khan, Crime No.I-222 of 2013 under Sections 302, 120-B, 201, 143, 147, 148 and 149 of the Indian Penal Code, 1860, under Sections 3/25 of the Arms Act, 1959 and under Sections 37 (1)(3)/135 of the Maharashtra Police Act, 1951 came to be registered against the above said accused persons.

5. The investigation of the above said crime has been completed. The Investigating Officer has filed charge-sheet, so also supplementary charge-sheet against the applicant/Sadik. The Session's trial is in progress

before the Additional Sessions Judge, Ahmednagar.

6. In the above background, both the applicants are seeking bail mainly on the ground that important witnesses have been examined before the Trial Court. There is no iota of evidence against the applicants/accused and they are behind the bars for more than four years.

7. Heard Mr. A. K. Bhosale, learned counsel for the applicants, Mr. S. G. Sangle, learned A.P.P. for the respondents/State assisted by Mr. G. R. Syed, learned Advocate for the first informant in respective applications.

8. Mr. A. K. Bhosale, learned counsel for the applicants vehemently submitted that fifteen witnesses are examined by the prosecution before the Trial Court. There is no iota of evidence against the applicants/accused. Both the applicants are behind the bars for more than four years. There are no criminal antecedents against both the applicants. There is no recovery from both the applicants. They have not played any role in the commission of crime, much less party to the conspiracy. Mr. A. K. Bhosale, learned counsel for the applicants/accused also took me through the relevant part of the F.I.R., supplementary statement of the first informant and the statements of relevant witnesses in order to support his submissions. He submitted that there are sixty two witnesses. The prosecution has examined

only fifteen witnesses. The trial may take considerable time. As such the applicants are liable to be released on bail even on certain conditions, when there is no iota of evidence against them, it would be pre-trial conviction.

9. Mr. S. G. Sangle, learned A.P.P for the State assisted by Mr. G. R. Syed, learned counsel for the first informant strongly opposed to allow these applications. He submitted that the incident had taken place in a broad daylight on 16-09-2013. The applicants/accused had played active role in causing murder of practicing Advocate Riyaj Pathan. They were party to the conspiracy and also members of an unlawful assembly and shared a common object. He pointed out that the applicant - Pawan Somnath Narula went on absconding after the incident. He was arrested after two years on 07-04-2015 whereas applicant - Sadik Bashir Shaikh also went on absconding and he came to be arrested on 28-07-2018 against whom supplementary charge-sheet has been filed.

10. Mr. S. G. Sangle, learned A.P.P. pointed out that there are four eye witnesses who have disclosed the role played by these two applicants. He submitted that fifteen witnesses have been examined by the prosecution before the Trial Court. The trial was obstructed due to Covid-19 pandemic situation. The trial was also delayed because of tactics played by the accused. He submitted that it is a case of murder of practicing Advocate in

a crowded place in front of Sub-Registrar Office. Twelve accused are involved in his murder. Out of them, two accused are on bail. He submitted that when the trial is in progress, the applicants/accused may not be released on bail. Applicant – Pawan Somnath Narula has criminal antecedents. If applicants/accused are released on bail, they may tamper with prosecution witnesses and even they may flee away from the trial. The learned A.P.P., therefore, strongly opposed to allow these applications for bail.

11. I have considered the submissions of Mr. S. G. Sangle, learned A.P.P. and Mr. A. K. Bhosale, learned counsel for the applicants/accused. It is a case of a murder of a practicing Advocate Riyaj Pathan resident of Newasa. He was shot dead by using country-made pistol in front of Sub-Registrar Office, Newasa in a crowded locality. The first informant seems to be an eye witness to the incident who had disclosed the role of these two-applicants in translucent words. It is not enough that there are four eye witnesses, namely, Mushtak Hidayat Khan Pathan, Afsar Khan Zaid Yusuf Khan Pathan, Asif Ibrahim Shaikh and Kasim Pasha Shaikh who had seen both the applicants at crime scene while instigating the main accused to fire bullets and kill the practicing Advocate Riyaj Pathan. On perusing the statements of above said four witnesses, it is noticed that they have

described the role of both the applicants categorically. Therefore, it is clear that the presence of both the applicants at crime scene is *prima facie* brought on record by the prosecution side with the help of statement of first informant and four eye witnesses.

12. It is also rightly pointed out by Mr. S. G. Sangle, learned A.P.P. that both these applicants were absconding for a considerable time for about three years and five years respectively. Applicant – Pawan Somnath Narula came to be arrested on 07-04-2015 and Applicant - Sadik Bashir Shaikh arrested on 28-07-2018. It is one of the important circumstance which is a main hurdle in the way of applicants to consider their applications for bail.

13. The offences alleged against the applicants are heinous and serious. They alleged to have involved in a case of heinous murder of a practicing Advocate Riyaj Pathan in a broad daylight.

14. The prosecution machinery has cited sixty two witnesses in the charge-sheet and out of them, fifteen witnesses have been examined by the prosecution. It is rightly pointed out by the learned A.P.P. that the trial was obstructed due to Covid-19 pandemic situation and it is delayed. He also pointed out that the accused are also playing tactics to delay the trial and

invited my attention to the order passed by the Trial Court below Exhibit-1 dated 09-03-2020. It is also pointed out by the learned A.P.P. that there are criminal antecedents against the applicant – Pawan Somnath Narula and Crime No.212/2011 has been registered against him under Sections 307 and 384 of the Indian Penal Code, under Section 3/25 of the Arms Act and under Section 135 of the Maharashtra Police Act.

15. Having considered the above said facts of the case and *prima facie* material placed on record by the prosecution agency and looking to the substantial progress in the trial, I am of the view that, it is not a fit case to release the present applicants/accused on bail. If the applicants are released on bail, there is every possibility that they may tamper with the prosecution witnesses. Secondly, there is also strong possibility that they may flee away from trial by taking into consideration their past conduct.

16. The applicants are charged of having committed a serious offence of murder. The nature of accusations and the severity of punishment in case of conviction and the nature of supporting evidence which is *prima facie* against the applicants/accused.

17. The Division Bench of this Court while deciding Criminal Writ Petition No.1101 of 2018 dated 01-02-2021 has already expedited the trial.

As such, no need to issue same directions for expeditious disposal of the Session's trial.

18. Both the applications are liable to be rejected. Hence, the following order is passed:

ORDER

(i) The bail applications moved by the applicants, namely, Sadik S/o Bashir Shaikh and Pawan S/o Somnath Narula in connection with Sessions Case No.194 of 2018 sub-judice before the Additional Sessions Judge, Ahmednagar, District Ahmednagar, are hereby rejected.

(ii) The bail applications are, accordingly, disposed of.

(iii) Mr. A. K. Bhosale, learned counsel is appointed through the High Court Legal Services Sub-Committee, Aurangabad in Bail Application No.947 of 2020 filed by Pawan Somnath Narula. His fees is quantified at Rs.5,000/-. The Secretary, High Court Legal Services Sub-Committee, Aurangabad is requested to make payment to Mr. A. K. Bhosale, learned counsel for applicant in Bail Application No.947 of 2020.

(iv) In view of disposal of bail applications, criminal applications also stand disposed of.

(iv) The observations made by this Court are *prima facie* to the extent of deciding these bail applications and trial Court shall not get influenced by those observations made by this Court.

(SHRIKANT D. KULKARNI, J.)

Sameer