

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 1553 OF 2022
IN CRIMINAL APPEAL NO.995 OF 2018**

Shahabaj Majid Pathan

....Applicant/
Appellant

Versus

The State of Maharashtra and anr.

....Respondents

Mr. Aniket Vagal along with Mr. Kunal Pednekar, Advocates for the Applicant/Appellant.

Ms. P. P. Shinde, APP for the State.

Ms. Farhana Shah, Advocate for Respondent No.2.

**CORAM : PRASANNA B. VARALE &
N. R. BORKAR, JJ.**

DATE : 22nd SEPTEMBER, 2022.

P.C. :

1. Heard Mr.Vagal, learned counsel for the applicant.
2. This is a second attempt of the applicant before this Court seeking his enlargement on bail pending appeal. The first application being criminal application No.1511 of 2018 was filed before this Court in 2018. Vide order dated 25th September, 2018, when this Court expressed its disinclination to entertain the application and release the applicant on bail, learned counsel for the applicant sought permission to withdraw the application and, accordingly, the applicant was permitted to withdraw the

application and the applicant was granted liberty to apply afresh if the appeal is not taken up for hearing within one year. Accordingly, fresh application is filed.

3. Mr. Vagal, learned counsel appearing on behalf of the applicant vehemently submitted before this Court that the applicant at the relevant time was a young boy of hardly 19 years of age. It is further submitted by Mr.Vagal that the case of the prosecution, even if taken as it is, reflects that the applicant had played no active role in the entire incident. It is also submitted by Mr.Vagal that majority of the witnesses are in relation of the victim and, as such, they are against the applicant. Mr. Vagal then vehemently submitted that, out of these witnesses, three witnesses submitted before this Court that they were restrained by the applicant and, thus it is not possible that the applicant alone would resist three persons at one time. On this ground, Mr. Vagal prayed for release of the applicant on bail.

4. The application is vehemently opposed by learned APP as well as learned counsel appointed to represent the complainant. Learned APP as well as learned appointed counsel invited our attention to the evidence brought before the Court. It is submitted by learned APP that the victim was subjected to brutal attack and the injuries suffered by the victim are more than 20 in number and are inflicted on vital parts of the body. Out of

these injuries, there are 15 stabs and incised wounds suffered by the victim.

5. Our attention was invited to the testimony of the witnesses. For our satisfaction, we have perused the vernacular version of these witnesses. Perusal of testimony of the material witnesses shows that the applicant took an active lead in restraining and restricting other witnesses to intervene. We may refer to the version of PW-9, who in his testimony before this Court, states in clear and unambiguous words that the applicant was restraining the witnesses to intervene and this restrain and restrictions only facilitated the assaulter on one hand and prevented any good samaritan so as to intervene and provide some help to the victim. Thus even accepting that the applicant was not armed with any weapon, his act of restraining other witnesses to intervene so as to provide an immediate assistance to the victim, helped the assaulter to inflict brutal attack on the victim. The in-depth assessment of the evidence, at this stage, is not expected. In our prima facie opinion, this is not a fit case to grant release of the applicant on bail pending appeal. Accordingly, the application is rejected.

(N. R. BORKAR, J.)

(PRASANNA B. VARALE, J.)