

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

***INTERIM APPLICATION NO.2026 OF 2022
IN
CRIMINAL APPEAL NO. 410 OF 2022***

Yusuf Wali Mohammed Sajida	]	
Age – 47 Years,	]	
R/at.Room No.2, Wali Mohameed Chawl	]	
Khot Dongri, Opp.Tipco Heights,	]	
Rani Sati Road, Malad (E), Mumbai.	]	...Applicant

Versus

1)	The State Of Maharashtra	]	
	(At the instance of Dindoshi	]	
	Police Station)	]	
2)	Rajesh Dashrath Jadhav,	]	
	Age – 30 years, Occupation – Service,	]	
	R/at. Baban Jadhav Chawl,	]	
	Khot Dongri, Opposite Tipco Heights,	]	
	Room No.1, Ranisati Road,	]	
	Malad (East), Mumbai.	]	...Respondents

...

Mr.Prashant Pandey a/w. Mr.Pradip Singh,
Ifraan Unwala, Darshit Jain, Suraj Ravindra Kath i/b. M/s.WZ Legal LLP,
Advocate for the Appellant.

Mr.A.R. Kapadnis, APP for Respondent No.1 – State.

Mr.Kaushik Mhatre, Advocate for Respondent No.2.

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*CORAM : REVATI MOHITE DERE &
SHARMILA U. DESHMUKH, JJ.*

DATE : 21st JULY, 2022

ORDER (Per :- SHARMILA U. DESHMUKH, J.):

1 Heard learned counsel for the parties.

2 By this interim application, filed under Section 389 of the Code of Criminal Procedure (Cr.P.C.), the applicant seeks suspension of his sentence and enlargement on bail, pending the hearing and final disposal of his aforesaid appeal.

3 Vide Judgment and Order dated 23rd December 2021 passed by the Learned Additional Sessions Judge, Borivali Division, Dindoshi, Mumbai, in Sessions Case No.44 of 2015, the Applicant alongwith other co-accused has been convicted for the offences punishable under Sections 302 r/w 149, 324 r/w 149, 323 r/w 149, 506(2) r/w 149, 143, 144, 147, 148 of the Indian Penal Code ("IPC", for short).

4 For the offence punishable under Section 302 r/w 149 of the Indian Penal Code, the Applicant is sentenced to suffer imprisonment for life and to pay fine of Rs.7,000/-, in default, to suffer rigorous imprisonment for one year.

5 The Applicant has also been awarded separate sentences for the other offences.

6 All the sentences are directed to run concurrently.

7 The Ld. Counsel appearing for the Applicant submits that the role ascribed to the Applicant in the incident which took place on 21st October, 2014 is similar to the role ascribed to the co-accused – Imran Kazi. He submits that Imran Kazi's sentence was suspended and he was enlarged on bail *vide* order dated 23rd June, 2022, passed in Interim Application No.1096 of 2022 in the aforesaid Criminal Appeal No.410 of 2022. The Applicant, therefore, seeks bail on the ground of parity.

8 Perused the papers as well as the order dated 23rd June, 2022, passed in Interim Application No.1096 of 2022. The statements of the eye witnesses i.e. P.W.-12 Rajesh Jadhav (Complainant and eye-witness); PW-15 – Hitesh Trivedi and PW-19 – Utkarsha Raikar, are relevant. It appears from the evidence of the eye-witnesses that the incident took place on 21st October 2014 at about 5:00 to 5:15 p.m. According to PW-12 – Rajesh Jadhav, he saw a quarrel between Accused No.1 – Sohail Ansari, Accused No 3 Imran Kazi and Shahrukh Sajida on one hand and their neighbours Jayesh Trivedi, Hitesh Trivedi and their mother – Daya Trivedi, on the other hand; that when he (PW12 – Rajesh) and his cousin – Ramesh Jadhav (deceased) went to intervene in the said quarrel, the Accused started assaulting him and Ramesh (deceased); that Accused No.1 – Sohail rushed to his house and again returned to the spot of the incident with a sword and assaulted Ramesh (deceased) with the said sword. He has further stated that Shahrukh assaulted him (PW12 – Rajesh) with a wooden bamboo; that, Accused No.4 – Gullu Sajida came to the spot with a gupti and pierced the said gupti in Ramesh Jadhav's left thigh; that Yusuf (Applicant) and Accused

No. 3– Imran held Ramesh Jadhav; that Accused No.1 – Sohail inflicted a blow on the hand of Dayaben Trivedi, with a sword; that when he (PW12 – Rajesh) tried to intervene to save Ramesh (deceased), Shahrukh threatened him; that after a gap of half a minute Ramesh was freed, after which Ramesh fell on the ground.

9 As far as PW15 - Hitesh Trivedi is concerned, he has stated that the incident took place on 21st October 2014 at about 5:00 to 5:15 p.m. when he was washing his bike in front of his house. He has stated that Accused No.1 – Sohail was looking at him angrily, however, he did not pay heed to the same; that after washing his bike, he returned home, at which time Accused No.1 – Sohail asked him, why he was looking at him and that nobody would dare to ask him about his behaviour; that Accused No.1 – Sohail started abusing him; that on hearing the said abuses, his mother and brother – Jayesh came out of the house; that Accused No.1 – Sohail also started abusing them; that thereafter Accused No.1 – Sohail returned to his house and again came to the spot in an auto rickshaw with an iron rod; that the present Applicant - Yusuf Ali and his son Shahrukh followed Accused No.1 – Sohail; that Accused

No.1 – Sohail, the present Applicant - Yusuf Ali and Shahrukh started assaulting him (Hitesh), his mother and brother – Jayesh; that at that time, the Accused No.3 – Imran Kazi was present with them and that he has also assaulted them; that as he, his mother and brother started shouting, PW12 - Rajesh Jadhav came to the spot and intervened in the quarrel, however, the accused started assaulting Rajesh Jadhav. Thereafter, accused No.1 – Sohail is alleged to have gone to Wali Mohammed chawl and returned to the spot with a sword; that Ramesh (deceased) who was returning home from his work place that intervened in the quarrel; that accused No.1 – Sohail tried to assault his (PW15's) mother, however, as his mother raised her left hand, she sustained an injury on her left palm; that accused No.4 – Gullu came from behind and that he was having a gupti in his hand; that Ramesh (deceased) tried to persuade accused No.4 – Gullu and others, however, accused Nos.1 to 4 and Sharukh went towards Ramesh, held and dragged him, after which, the present Applicant – Yusuf pushed Ramesh against the wall and pressed him against the wall, that Accused No 3 – Imran Kazi is stated to have pressed Ramesh's neck; thereafter, accused No.1 – Sohail is stated to have assaulted Ramesh with a sword

on his chest and, thereafter, accused No.4 – Gullu is also alleged to have pierced a gupti on the left thigh of Ramesh.

10 PW19 – Utkarsha Raikar in his evidence has stated that the Applicant dragged Ramesh Jadhav (deceased); Accused No 3 Imran is alleged to have held Ramesh's neck; that the Applicant is stated to have told other accused to kill him, after which, Accused No.1 – Sohail assaulted Ramesh with a sword on his chest; that when Accused No.1 – Sohail gave another blow, Ramesh allegedly raised his hand to save himself from the said blow, pursuant to which Ramesh received an injury on his right hand and chin. Thereafter, Accused No.4 – Gullu Sajida is alleged to have pierced an iron gupti on Ramesh's left thigh, which came out from the anterior side and as there was heavy bleeding, Ramesh started shouting for help. It is alleged by PW19 – Utkarsha that when PW 12 - Rajesh went towards Ramesh Jadhav, to help him, Shahrukh who was holding a bamboo stick in his hand, threatened Rajesh not to interfere or he too would be assaulted. It is alleged that after the incident, all the Accused and Shahrukh left the spot with weapons in their hands.

11 *Prima facie*, there are discrepancies in the ocular evidence of the said 3 eye witnesses with respect to the role attributed to the Applicant. The Applicant is stated to have held Ramesh Jadhav (deceased) and pushed him against the wall. None of the three eye-witness have stated that the Applicant was armed with any weapon, nor have they stated that the applicant also assaulted any of the injured with any weapon. Learned APP also does not dispute the role of the Applicant. It is also not disputed that the applicant has no criminal antecedents. The Appeal has been admitted by this Court *vide* order dated 7th June 2022 and the final hearing of the Appeal is likely to take some time. Co-accused (Imran Anwar Kazi), who was attributed a similar role, has been enlarged on bail by this Court.

12 Learned counsel appearing for respondent no.2 has drawn the attention of this Court to paragraphs 10 and 11 of the judgment passed by the Apex Court in the case of *Anil Ari Vs. State of West Bengal*¹. In the said judgment the Hon'ble Apex Court has laid down the

¹ Manu/SC/0148/2009

factors to be considered while exercising powers under Section 389 of the Cr.P.C. in case of serious offences like murder. The Hon'ble Apex Court has held that the mere fact that during the trial, they were granted bail and there was no allegation of misuse of liberty is really not of much significance. It is further held that the effect of bail granted during trial loses significance when on completion of trial the Accused person have been found guilty. In the present case, the Applicant is seeking bail on merits and on the ground of parity. We have perused the evidence of the witnesses and the role attributed by them to the applicant.

13 Considering the overall evidence *qua* the applicant, and that is stated aforesaid, the application is allowed and the applicant's sentence is suspended and he is enlarged on bail on the following terms and conditions:

:: ORDER :

- i) The Applicant be enlarged on bail on executing P.R. Bond in the sum of Rs. 25,000/-, with one or two sureties in the like amount;

- ii) The Applicant shall report to the trial Court, once in three months on the day/date specified by the trial Court, till his Appeal is finally disposed of;
- iii) The Applicant shall keep the trial Court informed of current address and mobile contact number and/or change of residence or mobile details, if any, from time to time;
- iv) If there are two consecutive defaults in appearing before the trial Court, the learned Judge shall make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail;

14 At this stage, we are constrained to observe, that though the Interim Application has been filed seeking suspension of sentence and enlargement on bail, voluminous documents have been annexed running into almost 745 pages, which also includes copy of the Roznama of the Sessions Case No.44 of 2015 and

charge-sheet which are not relevant for the purpose of deciding the present Application. It has only resulted in burdening of the record with voluminous documents apart from the negative impact on environment due to indiscriminate usage of paper. Hence, we are constrained to impose some cost on the Applicant to be paid to an NGO, with the stated object of protection of environment.

15 Accordingly, we direct the Applicant to pay cost of Rs.20,000/-, to Vanshakti, an NGO, and produce a receipt thereof in the Registry of this Court within a period of four weeks from today.

16 The application is disposed of on the aforesaid terms.

17 All concerned to act on the authenticated copy of this order.

SHARMILA U. DESHMUKH, J.

REVATI MOHITE DERE, J.