

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

CRIMINAL BAIL APPLICATION NO. 3684 OF 2021

1. Shoeb Amir Khan
2. Mubarak Momin Khan
3. Jaffar Amir Khan ...Applicants
Versus
The State Of Maharashtra ...Respondents

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Mr. Rahul Arote, Advocate for the Applicants.

Ms. P. N. Dabholkar, APP for the Respondent – State.

Mr. Ghorpade (PSI) Pawai Police Station, Present.

CORAM : PRAKASH D. NAIK, J.
DATE : 8th APRIL, 2022.

PER COURT:

1. This is second application for bail. The previous application was rejected by this Court vide order dated 6th April, 2021. However, it was noted that accused were in custody for three years and hence it was directed that trial may be concluded within six months.

2. The applicants are arrested on 7th August, 2018 in C.R. No.405 of 2018 registered with Pawai Police Station for offences punishable under Sections 307, 363, 387, 341 506(2) & 323 r/w Section 34 of Indian Penal Code (for short “IPC”).

3. The case of the prosecution is that the complainant is

vegetable vendor. On 28th July, 2018 complainant was threatened by Jafar for not paying hafta to Amin. On 5th August, 2018, Lal and Shoeb Khan visited complainant's Shop. He was threatened by pointing weapon and forced to sit on motorcycle. He was produced before Amin. Jafar was also present. Amin assaulted him by fist blow and threatened for not giving hafta. Amin assaulted him by sword. Shoeb, Lal and Jaffar assaulted him by fist/kick blows. He was confined. At 9.30 p.m. he was taken near his gala and again assaulted by fist blows. Amin threatened public at the spot. FIR was registered on 6th August, 2018.

4. Learned counsel for the applicants submitted that the applicants are in custody for a period of about 3 years and 8 months. Although the trial was expedited by this Court, the prosecution has so far examined only three witnesses. The complainant/injured has not supported the prosecution case. The co-accused Amin Momin Khan, who has been attributed the role of assault had approached the Hon'ble Apex Court and by order dated 31st August, 2021 he has been granted bail. The applicants are entitled for bail on the ground of parity. The application preferred by the applicants was primarily rejected by this Court, considering criminal antecedents. However, there were also criminal

antecedents against co-accused Amin Khan, who has been directed to be released on bail.

5. Learned APP submitted that the previous application was rejected by this Court. The trial Court has recorded evidence of three witnesses. There are criminal antecedents against the applicants. The last offence i.e. C.R. No.26 of 2020 was registered with Kurar Police Station for offences under Sections 353, 323, 504 & 506 of IPC. The accused had assaulted the public servant while in custody. The co-accused, who has been granted bail by the apex Court indulged in threatening the witnesses and it is proposed to move an application for cancellation of bail granted to him. He had also committed breach of condition imposed while granting bail to stay out of jurisdiction of the Police Station.

6. It is not in dispute that the applicants are in custody for a period of 3 years and 8 months. Co-accused Amin has been granted bail by the apex Court. While rejecting the previous application, the trial expedited, the trial Court requested to conclude the trial within six months. The co-accused Amin Momin Khan was attributed role of assault by sword. He had threatened the complainant. Considering the aforesaid circumstances, bail can be granted to the applicants.

7. Hence, I pass the following order:

ORDER

- i.** Criminal Bail Application No.3684 of 2021 is allowed;
- ii.** The applicants are directed to be released on bail in connection with C.R. No.405 of 2018 registered with Pawai Police Station, Mumbai on executing PR. Bond in the sum of Rs.25,000/- each with one or more sureties in the like amount;
- iii.** The applicants shall not tamper with the evidence.
- iv.** The applicants are permitted to furnish cash bail in the sum of Rs.25,000/- each for a period of eight weeks in lieu of surety.
- v.** The applicants shall stay outside the territorial limits of Municipal Corporation of Greater Mumbai till further order.
- vi.** The applicants shall furnish the details of their place of residence after their release on bail to Investigating Officer.
- vii.** The applicants shall not tamper with the evidence.
- viii.** Bail Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)