

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

CRIMINAL BAIL APPLICATION.3999 OF 2021

Sarfaraz Salauddin Shaikh

.... Applicant

versus

State of Maharashtra

.... Respondent

.....

- Mr.Salman Anwar Khan, Advocate for Applicant.
- Mr.P. H. Gaikwad, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 31st JANUARY 2022

(through video conferencing)

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.261/2021, dated 30/04/2021, registered with Shanti Nagar Police Station, Thane City, under sections 307 r/w 34 of the Indian Penal Code. The Applicant was arrested on 24/05/2021 and since then he is in custody. The investigation is over and the charge-sheet is already filed.

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2. Heard Mr.Salman Anwar Khan, learned counsel for the Applicant and Mr.P. H. Gaikwad, learned APP for the State.

3. The FIR is lodged by one of the victims Nehal Abrar Ansari on 30/04/2021. He has stated that there was some enmity between Nehal and one Firoz. The informant was threatened by Firoz about two years before the FIR. On 29/04/2021 at about 07.00 p.m. the informant was returning home, his friend Izhar called him on phone and told that they should have tea. Izhar then met him. They went to Nijami Hotel. There they had tea and while returning back, they were stopped by Firoz, the present Applicant and Faizan. The Applicant is Firoz's brother and is mentioned in the FIR. The Applicant told Nehal that he would be finished that day. In the FIR, there is a common statement, that, all the three assailants gave blows with sharp weapons on the informant on his face, neck, throat, chest and fingers. Izhar tried to save him, but he was also assaulted. Thereafter the assailants went away from the spot. The people from the locality took all of them to hospital and then this FIR is lodged.

4. Learned counsel for the Applicant submitted that there is variance between the version of the informant and other eyewitnesses including the other victim Izhar. He submitted that though there are many injuries to Nehal, all of them except one, are simple injuries, whereas Izhar has all the simple injuries. He submitted that the Applicant is in custody since 24/05/2021. The main accused Firoz is released on bail under the provisions of section 167 of Cr.PC. He submitted that suitable conditions be imposed on the Applicant. He further submitted that the Applicant's wife had recently given birth to their child, who is four months of age. Therefore on humanitarian ground the application be considered sympathetically.

5. Learned APP opposed this application, based on the contents of the FIR and statements of the eyewitness and other victims. He submitted that the Applicant had six other antecedents which may be taken into consideration. He further submitted that in case the Court is inclined to grant him bail, some strict conditions be imposed on the Applicant.

6. I have considered these submissions. The FIR gives a general role of the assault to all the three assailants. However, the statement of other victim Izhar is more specific. While describing the incident, he has stated that the Applicant and co-accused Faizan held Nehal and Firoz gave blows with knife. Firoz himself had assaulted this witness Izhar on his neck, near left ear and left shoulder. There are other statements of Nehal's family namely his father and mother. They have stated that after the incident, all the assailants had come to their house and had told them that they had mounted murderous assault on Nehal. There is recovery of knife at the instance of Firoz. The main role is thus attributed to co-accused Firoz, who is already granted bail pursuant to the provisions of section 167 of Cr.P.C.

7. The statements of the victims Nehal and Izhar are important. Izhar is more specific to state that Firoz had given all the blows and the Applicant had held Nehal. The injury certificate of Nehal shows that there are 9 injuries on his person,

out of which only one injury on the left upper lip is described as grievous injury. All other injuries are described as simple injuries. The offence has not escalated to a higher degree. The Applicant's family is consisting of a new born baby, four months old. This is also an additional humanitarian ground in favour of the Applicant.

8. Considering all these factors, I am inclined to grant bail to the Applicant. However, his antecedents cannot be ignored. Most of the antecedents are regarding section 324 of the IPC. The other two antecedents are in respect of 354 and 392 of the IPC. Therefore, it is necessary to keep check on his activities for which the Applicant can be directed to give attendance to the concerned police station.

9. Hence, the following order :

ORDER

- (i) In connection with C.R.No.261/2021, dated 30/04/2021, registered with Shanti Nagar Police

Station, Thane City, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.

- (ii) The Applicant shall attend the concerned police station twice a week for a period of one year from today.
- (iii) In case of a single default on the part of the Applicant, the officers of the concerned police station can approach this Court and point out such breach.
- (iv) With these observations, the application is disposed of.

(SARANG V. KOTWAL, J.)