

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

931 BAIL APPLICATION NO.974 OF 2023

MOHAMMAD RIYAZ ALIAS DON S/O. MOHAMMAD ANIS
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Kazi S S
APP for Respondent: Mr. K. S. Patil

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CORAM : S. G. MEHARE, J.

DATE : 05.07.2023

PER COURT :

1. Heard the learned counsel for the applicant and the learned A.P.P. for the respondent state.
2. This is a successive bail application of the applicant after the order of this Court dated 18th August, 2022.
3. The learned counsel for the applicant has pointed out that the earlier bail application was not decided on merits, therefore, this Court has to hear the application on merits. This Court in its order dated 18th August 2022 has observed that the Court has simply gone through the F.I.R and not applied its mind to the rest of the police papers. Thereafter, the learned counsel appearing for the present

accused withdrew the application with liberty to move again, if the trial could not be concluded within nine months.

4. After hearing the learned counsel for the applicant at length and going through the papers, the Court expressed disinclination to grant bail, the learned counsel for the applicant sought time to take instructions. Now at 5.29 p.m. the learned counsel for the applicant appeared and stated that he wish to file an application before the Sessions Court.

5. It seems that when the Court expressed disinclination to grant bail on merits, he has changed his mind and is seeking liberty to file an application before the learned Sessions Court. If the earlier bail application, by order dated 18th August, 2022, was not decided on merits, so this application must have been entertained by this Court. Therefore, no liberty as sought by the applicant has been denied, more particularly after the Court expressed disinclination to grant bail. Now, the counsel is again asked whether he wanted to have the order of this Court or have instructions to withdraw. The learned counsel for the applicant/ accused states that he has no instructions to withdraw the application. Hence, the Court proceeded to pass the order on merits.

6. The learned counsel for the applicant has vehemently argued that the applicant has no alias name 'Don'. On the date of the incident, there was marriage of his sister. Many guests were gathered in his home. He was not present on the spot of the incident. He heavily argued that his alias name is wrongly mentioned. He would submit that he is not the main assailant. Nothing is recovered from him. He is a bread winner of his family. This is the first crime registered against him. Beside merits, he also claimed that the similarly situated two co-accused have been granted bail; hence he deserves parity.

7. The learned A.P.P. would submit that the applicant has been named in the First Information Report. There are eye-witnesses to the incident which establish the presence of the applicant on the spot of the incident. There were around thirty eight injuries on the person of the deceased. The deadly weapon like knives were used in the crime. It was a brutal murder. The applicant has no evidence to establish his plea of alibi. Barely naming him as alias Don would not absolve him from the crime. Sufficient material is collected against him by the investigating officer. The offence is grave and serious. Hence, the applicant does not deserve bail.

8. The first information report figures the name of the applicant.

The specific allegations have been levelled against all the accused present on the spot of the incident, that firstly accused Taleb Sultan Chais assaulted the deceased with knife and other accused also assaulted him with the knife. Around nine persons were named in the first information report. There were number of injuries on the body of the person of the deceased. It was a brutal murder. The applicant except the bare words has no evidence to show that he was not present on the spot of the incident. There were eye-witnesses to the incident who have named the applicant. As far as the parity is concerned, one of the co-accused has been granted bail as he has proved by way of C.C.T.V. footage that he was not present on the spot of the incident and second was granted bail as he was not named in the first information report. Considering the role attributed to them and the material produced against them they were granted bail. Comparing their role and reasons for granting them bail, the Court is of the view that the parity cannot be extended to the present applicant.

9. At the cost of the repetition, the Court observed that *prima facie* evidence is available against the applicant. There are eye-witnesses to the incident . The offence is serious and grave.

10. For the above reasons, the applicant is not entitled to bail.

Hence, the application stands dismissed.

(S. G. MEHARE)
JUDGE

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