

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

BAIL APPLICATION NO.1407 OF 2023

PASHA @ BABA KHAN AFZAL KHAN
VERSUS
THE STATE OF MAHARASHTRA

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Mr. Syed Azizoddin R., Advocate for the Applicant.
Mr. K. S. Patil, APP for Respondents-State.

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CORAM : S. G. CHAPALGAONKAR, J.

DATE : 06th SEPTEMBER, 2023.

PER COURT:-

1. By this application, the applicant seeks regular bail in connection with Crime No.85/2023 registered with Tadkalas Police Station, Dist. Parbhani for the offences punishable under Section 302, 307, 341, 143, 147, 148, 149 of the Indian Penal Code and Section 135 of the Maharashtra Police Act.

2. The investigation was set in motion on the basis of the information given by one Gorasing Dudhani. In nutshell he alleges that on 27.05.2023 while he was proceeding on motorcycle alongwith other victims, unknown persons arrived at the spot. They thrown something like chilly powder and thereafter assaulted the informant and others. The deceased Kirapalsing Bhond, who was their companion received injury of rod on his head apart from other injuries and succumbed to those injuries. The informant recorded his supplementary statement, wherein he has given description of the assailants. On the basis of the information supplied by police, he states that accused persons

were assailants at the time of the incident. The investigation progressed. During the course of investigation, statements of eye witnesses are recorded. The statement of Sayyed Maujad Sayyed Samandar, Sayyed Akbar, Sayyed Sardar describes about the assault by the accused persons. The role of the individual accused has been specified. It is alleged that the one unknown accused assaulted the deceased by fist and kicks. There is no allegation that he was holding any weapon in his hand. It appears that, identification parade was conducted after about a month, in which the applicant is alleged to have been identified as one of the assailant.

3. Mr. Syed, learned Advocate appearing for the applicant would submit that initially FIR was lodged against unknown culprits. The name of the applicant is introduced by way of supplementary statement of the informant. Even in supplementary statement, the name of the applicant is inserted on the basis of the information received from the police. He would submit that presence of alleged eye witnesses is not natural. So called identification parade is also not believable.

4. The learned APP opposes the application. He would submit that the applicant is named by three eye witnesses. Further, identification parade discloses about his presence. The deceased had suffered multiple injuries. Section 149 of the Indian Penal Code attracts. Hence, urges to reject the application.

5. Having considered the submissions advanced, apparently the applicant is not named in the FIR. The supplementary statement of the informant wherein name of the

applicant is shown as one of the assailant is also of no consequence, since it is based on hearsay information. Although, there are three eye witnesses, even by considering the role attributed to the applicant in such statement it is apparent that he was not holding any weapon. The allegation is that he has given kicks and fists blows. The nature of the allegation in the FIR shows that under the misconception or the pretext that the informant, deceased and another companion are thieves, the incident has taken place. It does not appear that there was any intention to cause death. However, it would be the matter of trial. *Prima facie*, considering the fact that investigation in the crime is over, the applicant is behind the bar since 25.05.2023 and specific role attributed to the applicant, the case is made out for grant of bail. It is made clear that, observations made hereinabove are for *prima facie* consideration and only for disposal of this application. Hence, the following order:

ORDER

- (i) Bail Application is allowed.
- (ii) The applicant, Pasha @ Baba Khan Afzal Khan be released on bail in Crime No.85/2023 registered with Tadkalas Police Station, Dist. Parbhani for the offences punishable under Section 302, 307, 341, 143, 147, 148, 149 of the Indian Penal Code and Section 135 of the Maharashtra Police Act on executing P.B. and S.B. of Rs.50,000/- (Rs.Fifty Thousand only) each on following condition:
 - a. The applicant shall not tamper with the prosecution evidence in any manner.
 - b. The applicant shall attend the proceedings before the

Sessions Court on each and every effective date.

c. The applicant shall not establish contact with the witnesses named in the charge-sheet.

(iii) Application is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/Sepetmber-2023