

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
BAIL APPLICATION NO.1440 OF 2023**

Shaikh Amer @ Ammu S/o Shaikh Pasha,
Age: 23 years, Occu.: Labour,
R/o. Govardhan Ghat, Taluka and Dist.
Nanded. ..Applicant

Versus

The State of Maharashtra
Through Vimantal Police Station,
Dist. Nanded. ..Respondent

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Mr. P. P. Giri, Advocate for the Applicant.
Mrs. P. V. Diggikar, APP for Respondents-State.

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AND
BAIL APPLICATION NO.1490 OF 2023

Mohammad Saker Mohammad Taher,
Age: 22 years, Occu.: Labour,
R/o. Farukh Nagar, Hingoli Naka, Nanded. ..Applicant

Versus

The State of Maharashtra,
Through its Investigating Officer,
Vimantal Police Station,
Nanded, Dist. Nanded. ..Respondent

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Mr. Granthi Manpreet Ajeet Singh, Advocate for the Applicant.
Mrs. P. V. Diggikar, APP for Respondents-State.

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CORAM : S. G. CHAPALGAONKAR, J.

DATE : 31st AUGUST, 2023.

PER COURT:-

1. Heard learned counsel for the applicants and learned
APP for the State.

2. The applicants are seeking regular bail in Crime No.0399/2022 registered with Vimantal Police Station for the offence punishable under 302, 323, 143, 146, 147, 148, 149 of the Indian Penal Code and Section 135 of the Maharashtra Police Act and Sections 4 and 25 of the Arms Act.

3. The investigation was set in motion on the basis of the information given by one Shaikh Iqbal Shaikh Jainoddin. It is alleged that on 21.11.2022, the marriage reception of the son of informant was arranged and guests were invited. At about 9.00 pm while guests were served with dinner, the accused persons arrived on bullet and motorcycle. They were insisting for playing music, however, the son of the informant namely Shaikh Mois declined their demand. The accused persons took Shaikh Mois to nearby place. The accused Mohammad Choli inflicted the blow of dagger on chest of Shaikh Mois. The other accused persons assaulted him using rod. Resultantly, Shaikh Mois lost life. In pursuance of the registration of the offence, in all 7 accused persons were arrested. The applicants were arrested on 23.11.2022. On completion of investigation, charge-sheet is filed. The applicants had moved Sessions Court for grant of regular bail, however, their prayer came to be rejected. Hence, the present applications.

4. The learned Advocate appearing for the applicants would submit that perusal of FIR and other evidence would show that the accused Mohammad Choli is alleged about using dagger and stabbing the deceased. The postmortem report suggests that deceased died on account of such injuries. It is submitted that no

specific role is attributed against the applicants. The investigation is completed. They are behind the bar for almost 10 months. Their further detention would not be necessary. They are ready to abide by any condition as imposed by this Court.

5. It is further submitted that two accused persons named in the FIR i.e. Sayed Sadek s/o Sayed Majid and Sohail Khan Navid Khan are already released on bail by orders of this Court. The role attributed against those accused is similar to the present applicants. Therefore, on principles of parity, the applicants be given same treatment.

6. Per contra, the learned APP would submit that the presence of both the accused persons is surfaced during the course of investigation at the spot of the incident. It is submitted that the accused Shaikh Amer @ Ammu S/o Shaikh Pasha (applicant in Bail Application No.1440/2023) was found to be on the spot and blood stained clothes are recovered from him. So far as the accused Mohammad Saker Mohammad Taher (applicant in Bail Application No.1490/2023) is concerned the clothes are seized. The learned APP would further submit that Section 149 of the Indian Penal Code is invoked, therefore, the role of the applicants cannot be segregated from the role of the main accused at this stage. As such, she opposes the prayer for grant of bail.

7. Having considered the submissions advanced, apparently the FIR clearly depicts the main role against the Mohammad Choli, who gave blow using dagger on the chest of the deceased. The postmortem report suggests that the injuries which are attributed to the main accused are caused of death.

Although, it is alleged that the applicants have participated in commission of offence, no specific role has been attributed against them. There is no recovery of weapon. Although, the blood stained clothes are recovered from accused Shaikh Amer that may at the most establish his presence. There is no overt act attributed against him.

8. This Court has considered the entire evidence on record while dealing with the bail applications of Shaikh Amer @ Ammu S/o Shaikh Pasha and Mohammad Saker Mohammad Taher. This Court has observed that the main role is attributed against Mohammad Choli and there is no material to indicate the specific role of the other accused persons. Accordingly, those accused are released on bail. As rightly contended by the learned Advocate appearing for the applicants, the role attributed against the present applicants and material relied by prosecution against them is almost similar to that of the accused enlarged on bail. Therefore, even by principles of parity, the present applicants have made out case for grant of bail, however subject to certain conditions. Hence, the following order:

ORDER

- (i) Bail Applications are allowed.
- (ii) The applicants, Shaikh Amer @ Ammu S/o Shaikh Pasha and Mohammad Saker Mohammad Taher be released on bail in Crime No.0399/2022 registered with Vimantal Police Station for the offence punishable under 302, 323, 143, 146, 147, 148, 149 of the Indian Penal Code and Section 135 of the Maharashtra Police Act and Sections 4 and 25 of the Arms Act on executing P.B. and S.B. of Rs.50,000/- (Rs.Fifty Thousand only) each on following condition:

- a. The applicants shall not tamper with the prosecution evidence in any manner.
 - b. The applicants shall attend the trial on each effective date.
 - c. The applicants shall not contact the co-accused till conclusion of the trial.
- (iii) Applications are disposed of.

(S. G. CHAPALGAONKAR)
JUDGE