

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

931 BAIL APPLICATION NO.1505 OF 2023

MIRZA SHABBAR BAIG MIRZA GAFFAR BAIG
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr.S. S. Gangakhedkar
APP for the Respondent – State : Mrs. P.V.Diggikar
Advocate for assist to PP : Mr.M.K. Bhosle
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CORAM : S. G. CHAPALGAONAKAR,J.

DATE : 15.09.2023

PER COURT :-

1. The applicant seeks regular bail in connection with Crime No.87 of 2023 registered with Vazirabad Police Station District Nanded, for the offences punishable under Sections 387, 307, 143, 147, 148, 149, 120-B of the Indian Penal Code and under Section 4/25 of Arms Act.
2. The investigation was set in motion on the basis of information given by Shaikh Shamim Shaikh Isakh. It is alleged that on 23.03.2023 when informant came out of Masjid and proceeding on his motor-cycle, three persons arrived on their motor-cycle and assaulted him using Katti on his knee and butck. He sustained severe injuries. It is sum and substance of the allegation that the accused Mirza Shabbar Baig (applicant) had animus against the informant. Since month of September-2022, he was demanding money from the informant by way of extortion. Since the informant refused to accede with his

demand, he conspired to cause death of the informant with the help of assailants. The attack was executed against informant as per conspiracy hatched by applicant. Based on the aforesaid information, offence has been registered against the applicant and others. The applicant has been arrested on 21.04.2023. The prayer for grant of bail has been rejected by the Sessions Court vide order dated 11.08.2023.

3. Mr. Gangakhedkar, learned Advocate appearing for the applicant would submit that admittedly there is no participation of the applicant in commission of the offence. The allegation is that the applicant is master mind and at his instance the informant was attacked by three persons, who followed him on motor-cycle. He would submit that the charge-sheet is filed. Investigation is over. Looking to the material collected during the course of investigation, there is nothing to point out conspiracy by the applicant. He would submit that on account of previous disputes the applicant has been falsely implicated.

4. Per contra, Mrs. Diggikar, learned APP vehemently opposes the prayer for grant of bail. She would submit that the statements of witnesses, who were present at the time of actual incident of assault have heard the assailants, uttering the words towards the informant that why he is not listening to Shabbar Bhai (applicant). She would further point out that one of the witness namely Shaikh Najim Shaikh

Sayed states that the assailants while leaving injured informant on spot were telling him that he shall pay the amount. She would further point out that the recovery under Section 27 of the Indian Evidence Act is effected from accused Rahul alias Bakasur. In his disclosure statement, he states to have caused the attack as per say of applicant. Learned APP would also point out that the applicant is hardened offender and as many as 11 criminal cases are pending against him for various offences. She would, therefore, urge to reject the application.

5. Having considered the submissions advanced, apparently, in the actual of assault, there is no participation of the applicant. First informant states that the assailants were uttering that he shall obey the command of Shabbarbhai and thereafter they ran away from the spot. It would be difficult to draw the inference from the statement in the F.I.R. or witnesses that the assault was pre-meditated on the basis of instructions given by the applicant. It is alleged that the assailants were taking name of applicant and asking the informant to pay the amount as demanded by the said Shabbarbhai. However, except this, there is no evidence to indicate that the assailants were in contact with the applicant or they have hatched the conspiracy in connivance with applicant thereby giving effect to assault on the informant. The material available in the charge-sheet is bereft to *prima-facie* to make out the ingredients of the conspiracy to bring home the guilt under Section 120B of the Indian Penal Code. It is true that as many as 11

offences are pending against the applicant. However, in absence of the sufficient evidence regarding conspiracy, it would not be appropriate to continue detention of the applicant, who is behind the bar for almost last 5 months.

6. In that view of the matter, case is made out for grant of bail subject to certain conditions. Hence following order :

ORDER

- (i) Bail Application is allowed.
- (ii) The applicant, MIRZA SHABBAR BAIG MIRZA GAFFAR BAIG be released on bail in connection with Crime No.87 of 2023 registered with Vazirabad Police Station, District Nanded, for the offences punishable under Sections 387, 307, 143, 147, 148, 149, 120-B of the Indian Penal Code and under Section 4/25 of Arms Act, on executing P.B. and S.B. of Rs.50,000/- (Rs. Fifty Thousand only) each on following conditions :-
 - (a) The applicant shall not tamper with the prosecution evidence in any manner.
 - (b) The applicant shall not indulge in similar offence.
 - (c) The applicant shall not establish the contact with any witness named in the charge-sheet.
 - (d) The applicant shall co-operate with the investigation.

- (e) The applicant shall visit the Vazirabad Police Station once in a month i.e. on (5) Fifth day and update his contact number and address to the police till filing of the charge-sheet.
- (f) He shall attend each and every effective date during the course of trial.
- (iv) Bail Application is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

shp/-