

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

BAIL APPLICATION NO. 1570 OF 2023

SHAIKH ABUTAHER SHAIKH HUSSAIN
VERSUS
THE STATE OF MAHARASHTRA

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Mr. S.E. Siddiqui, Advocate for applicant.
Mr. K.S. Patil, APP for respondent.

CORAM : S.G. CHAPALGAONKAR, J.

**RESERVED ON : 27th September, 2023
PRONOUNCED ON : 3rd October, 2023.**

ORDER :-

The applicant seeks regular bail in connection with Crime No. 99 of 2023 registered with Jinsi police station, Aurangabad for the offences punishable under Sections 143, 147, 148, 149, 307, 323, 302 of IPC.

2. The investigation was set in motion on the information given by Yasmin Begum w/o. Munir Khan. She states that on 27.3.2023, at about 7.30 p.m., her husband had left the home. After some time, her brother in law received a telephonic message from one Shamida Shaikh that accused persons, namely Sultana Madem, Javed @ Dada, Salman, Sohail, Shaikh Taher Hussain are beating her husband Munir Khan. Her brother-in-law reached the spot. After some time, he informed that Munir Khan has suffered injuries and he has been taken to Government Hospital at Aurangabad. The informant further states that her brother in law told that her husband Munir and Shamida had a quarrel. At that

time, the accused persons, who are residents of same lane, intervened and assaulted her husband using the hockey sticks, fists and kick blows. As such, he sustained injuries.

3. On the basis of aforesaid information, initially offence punishable under Sections 307, 323, 143, 147, 148 and 149 was registered against in all 5 accused persons including the applicant. Subsequently, husband of the informant succumbed to the injuries. Hence, graver offence under section 302 came to be added.

4. In pursuance of aforesaid crime, applicant has been arrested on 14.6.2023. The investigation progressed. The charge sheet came to be filed. The applicant moved his bail application before the Sessions Court at Aurangabad, which came to be rejected vide order dated 25.7.2023.

5. The learned counsel appearing for the applicant would submit that although the incident occurred on 27.3.2023, the FIR has been lodged on 5.4.2023 when the victim was hospitalized for treatment for the injuries. Ultimately, the victim died on 7.4.2023. The delay in lodging the FIR is not explained. The possibility of false implication cannot be ruled out. He would further point out that the FIR itself is based on hear-say information. The learned counsel for the applicant would submit that perusal of the statements of witnesses in the charge sheet would shows omnibus allegations against the applicant. The applicant has no motive for the offence. The applicant, in fact, made an attempt to segregate assailants and save the victim from the attack at the hands of accused Sohail, who was holding the hockey stick. He would,

therefore, submit that the applicant has not played any role in commission of the offence. He has been falsely implicated. The investigation is over. Further detention of the applicant may not be necessary.

6. Per contra, learned APP strongly opposes the application. He would submit that the incident is witnessed by many persons. During the custody of the applicant, the discovery of Hockey Stick i.e. weapon of offence is made under Section 27 of the Act. The victim lost the life due to multiple injures. The Post Mortem report depicts that multiple injuries seen on the body of the deceased. He died on account of internal bleeding. The cause of death is *“Septecemia in an operated case of exploratory lapratomy with primary closure of ileal perforation due to blunt trauma abdomen.”* Therefore, he urges to reject the prayer for grant of bail.

7. Having considered the submissions advanced, apparently, the FIR is lodged on 5.4.2023 regarding the incident dated 27.3.2023. There is a delay of about 8 days in lodging the FIR. No explanation for such delay has been put forth by the prosecution. The brother of the deceased as well as informant were aware about the incident including the names of accused persons. As such, immediate FIR could have been lodged. Be that as it may, the FIR itself is based on hear-say information. The informant narrates the incident on the basis of narration given to her by the brother in law i.e. Abdul Gafur. It appears that during the investigation, the statements of the witnesses are recorded. The statement of Firoz Khan is recorded on 13.4.2023 i.e. after 17 days of the incident, who states about the role of each and every accused, wherein,

he narrates that applicant - Taher was seen assaulting deceased by Hockey Stick and others were assaulting him using the wooden log and iron pipe. Another witness i.e. brother of the victim Abdul Gafur recorded his statement on 23.4.2023, wherein, he states that on reaching spot he saw accused persons were present. The applicant was holding Hockey stick in his hand. However, he does not utter about assault by the applicant. The statement of PSI, Shaikh Hasan, appears to have been recorded on 24.5.2023, who states that the victim had been to the police station immediately after the incident accompanied with his brother Abdul Gafur. The victim disclosed that accused Salman Shaikh and Idris Shaikh took out a diary from his pocket. Accused Javed Sagiroddin hit him by wooden log, Salman Rais hit him using iron rod and Idris Rais Shaikh assaulted him using hockey stick. There is no reference of name of the applicant.

Similarly, statement of eye witness – Syed Ijajuddin Neeri appears to have been recorded on 26.6.2023, wherein, he stats that applicant/accused Taher took out a hockey stick from the hand of Sohail. The survey of the witness statements which are made part of the charge sheet would reveal that there is inconsistency regarding the role of the applicant. None of the statements incorporated in the charge sheet would pin point exact role of the applicant. The cause of death appears to be multiple injuries. Consistent role appears to have been attributed against accused Javed, Salman and Idris, who were holding wooden log and iron pipe and hockey stick in their hands, respectively. Therefore, it is difficult to presume that the applicant has actually participated in the assault. In that view of the matter, a case is made out for grant of bail. Hence, the following order :-

O R D E R

- (i) The application is allowed.
- (ii) The applicant – Shaikh Abutaher Shaikh Hussain be released on bail on furnishing PB. and S.B. of Rs. 50,000/- with one solvent surety of the like amount, in crime No. 99 of 2023 registered with Jinsi police station, Aurangabad, on the following conditions :-

[a] The applicant shall not tamper with the prosecution evidence.

[b] The applicant shall not establish contact with any person acquainted with the crime.

[c] He shall visit the concerned police station on 15th of every month, between 10.00 a.m. and 2.00 p.m. till conclusion of the trial.

[d] It is made clear that the observations made herein above are on prima facie consideration of the material on record and only for the purpose of deciding this application.

[e] The application stands disposed of.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-