

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

BAIL APPLICATION NO.1702 OF 2023

SHAIKH DAUD @ SHAHRUKH S/O SHAIKH NAJMODDIN
VERSUS
THE STATE OF MAHARASHTRA

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Mr. Chaitanya C. Deshpande a/w Aishwarya C. Deshpande,
Advocate for the Applicant.

Mr. S. B. Narwade, APP for Respondents-State.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 25th OCTOBER, 2023.**

PER COURT:-

1. The applicant seeks regular bail in connection with Crime No.308/2019 registered with Cantonment Chawani Police Station, District Aurangabad for the offences punishable under Sections 302 r/w 34 of the Indian Penal Code.

2. The applicant is facing trial in Sessions Case No.74/2020. In all three persons are charge-sheeted including applicant. The investigation was progressed on the basis of the FIR dated 25.09.2019 lodged by Sayyad Juned Sayyad Jahir. In nutshell it is alleged that the complainant received telephonic information from the victim that Sk. Daud Shahrukh Najimoddin and Sayyad Shahjad Ali Sayyad Naser Ali are asking him for money. He has further informed that Shahrukh and Naser are beating him. When the informant reached to the spot, he saw the motorcycle owned by Sayyad Jamir Sayyad Jahir. There were blood stains on the motorcycle. Accused Sayyad Shahjad Ali, Sayyad Naser Ali confessed that victim/Sayyad Jamir Sayyad Jahir has been assaulted by Sayyad Shaker Sayyad Naser Ali and

Shaikh Shahrukh Najimoddin and he is taken to the hospital. On the basis of the report, investigation progressed. The charge-sheet contains statement of Shaikh Rashid recorded under Section 161 of the Criminal Procedure Code, wherein he alleges that all three accused persons have assaulted victim using knife. The postmortem shows multiple injuries on the persons of the victim.

3. The learned Advocate appearing for the applicant submits that the applicant is behind the bar from 25.09.2019. The other two accused persons have been released on bail by orders of this Court in Bail Application Nos.1932/2022 and 59/2021. He would submit that on principles of parity the applicant is also entitled for grant of bail.

4. The learned APP vehemently opposes the prayer. He points out that the case of the present applicant is distinguishable from the other accused persons, who are already enlarged on bail. He points out that there is recovery of blood stained weapon from the applicant. The Chemical Analysis report confirms the presence of human blood, so also there is recovery of shirt with blood stains, as such case of the applicant is distinguishable.

5. Having considered the submissions advanced, it is a matter of record, that the applicant is behind the bar for more than four years, till this date only one witness is examined in the trial and trial is moving with snail speed. The indefinite incarceration of the under trial accused is deprecated in view of the rights guaranteed under Article 21 of the Constitution of India regarding speedy trial. Perusal of the document on record shows that the case is based on statement of the eye witnesses, who are attributing assault on victim by all three accused persons. Only on the basis of the two other circumstances, the case of the

applicant cannot be distinguished. In that view of the matter, under principles of parity, the applicant would be entitled for release on bail subject to certain conditions. Hence, the following order:

ORDER

- (i) Bail Application is allowed.
- (ii) The applicant, Shaikh Daud @ Shahrukh s/o Shaikh Najmoddin be released on bail in Crime No.308/2019 registered with Cantonment Chawani Police Station, District Aurangabad for the offences punishable under Sections 302 r/w 34 of the Indian Penal Code on furnishing 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 not establish contact with any witnesses named in the charge-sheet.
 - c. The applicant shall not indulge himself in any other criminal activity.
 - d. The applicant shall attend each and every effective date before the Sessions Court.
 - e. Except for attending the trial, the applicant shall not enter Corporation Limit of Aurangabad for the period of three months.
- (iii) Application is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE