

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
BAIL APPLICATION NO.1928 OF 2023**

SHAIKH SAGIROODIN DADA @ JAVED @ SHAIKH
SIRAJUDDIN
VERSUS
THE STATE OF MAHARASHTRA

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Mr. A. K. Bhosle, Advocate for the Applicant.
Mr. K. S. Patil, APP for Respondents-State.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATE : 06th NOVEMBER, 2023.**

ORDER:-

1. The applicant seeks regular bail in connection with Crime No.99/2023 dated 05.04.2023 registered with Jinsi Police Station, Dist. Aurangabad for the offences punishable under Sections 302, 307, 323, 143, 147, 148, 149, 201 of the Indian Penal Code.

2. The investigation was set in motion on the basis of the information given by wife of the deceased Munir Khan i.e. Yasmin Begum. She alleges that on 27.03.2023 at about 07.30 pm her husband had left the home. His brother Abdul received telephonic message that some persons are assaulting Shaikh Munir. After some time, her brother-in-law informed that Munir Khan has suffered injuries and has been shifted to Government Hospital, Aurangabad. It is further alleged that the brother-in-law informed her that the accused namely Sultana Madam, Javed @ Dada Salman, Sohail, Shaikh Taher Hussain were assailants of Munir Khan. On the basis of the aforesaid information, Crime No.99/2023 dated 05.04.2023 came to be registered. The investigation progressed. The applicant has been arrested on 11.04.2023. Since then, he is behind the bar. The plea for grant of bail moved by the applicant before the learned Sessions Court has been rejected. Hence, this application.

3. Mr. Bhosle, learned Advocate appearing for the applicant would submit that the applicant is behind the bar for more than six months. The investigation in the matter is complete. The charge-sheet is already filed. The accused Shaikh Abutaher Shaikh Hussain, Salman Rais Shaikh and Sohel @ Idris Rais Shaikh are already enlarged on bail by orders of this Court in Bail Application Nos.1570/2023 and 1630/2023. He would submit that the role attributed against the applicant is similar to the accused, who are already enlarged on bail. Therefore, on the principles of parity, the applicant also deserves to be enlarged on bail.

4. The learned APP, however strongly opposes the prayer for grant of bail to the accused/applicant. He would submit that there is consistent attribution regarding involvement of the applicant in commission of offence. The applicant was seen holding wooden log in his hand. He is named in the FIR as well as in the statements of the eye witnesses. There is recovery of the wooden log at the instance of the applicant. The role of the applicant and the nature of the evidence available would show his complicity in the commission of the offence is different than the accused, who are enlarged on bail. As such, there is no question of parity.

5. I have considered the submissions advanced on behalf of the learned Advocate appearing for the applicant, so also learned APP. This Court while granting bail to co-accused persons has recorded certain observations regarding genesis of this case. It has been observed that, although the incident of assault on victim is dated 27.03.2023, the FIR is lodged on 05.04.2023. There is inordinate delay of 8 days in lodging the FIR, without any explanation on record, which itself is *prima*

facie sufficient to uphold the contentions of the applicant regarding possibility of false implication. Pertinently, the real brother of the deceased as well as informant were aware about the incident and also assailants. However, no information was recorded with the police station on the day of incident or immediately thereafter. The charge-sheet do not show that MLC was forwarded to the police station. Further the FIR itself is based on hearsay information. Apparently it is based on information given by the brother of the deceased i.e. Abdul Gafur Khan. It is pertinent to note here that the statement of the Abdul Gafur Khan is recorded on 23.04.2023 i.e. after 29 days of the incident. Perusal of his statement would show that when he reached at the spot of incident i.e. at Dada Colony, he saw that accused Javed Khan was standing there and holding wooden log in his hand. It appears that, he is not the witness of actual assault. There are statements of few other witnesses, wherein some attributions are made against the applicant that he assaulted victim by wooden log. However, all those statements are recorded after gap of almost one month of the incident.

6. The medical evidence would depict that the victim died because of multiple injuries. The cause of death is septicemia in an operated case of ***“exploratory laparotomy with primary closure of ileal perforation due to blunt trauma abdomen”***. There was no injury on vital part of the victim’s body. The police papers nowhere bring home any specific motive on the part of the applicant in commission of offence. Although, there is recovery of wooden log at the instance of the applicant, there is no evidence to indicate that it was a weapon of offence. This Court has already admitted plea for grant of bail on behalf of the co-accused persons. The role attributed against all of them is more or less similar in nature. The applicant is behind

the bar for almost seven months. The trial would take its own course. In that view of the matter, case is made out for grant of bail. It is made clear that the observations made hereinabove are on *prima facie* consideration of the material on record and only for the purpose of deciding this application. Hence, the following order:

ORDER

- (i) Bail Application is allowed.
- (ii) The applicant, Shaikh Sagiroodin Dada @ Javed @ Shaikh Sirajuddin, be released on bail in Crime No.99/2023 dated 05.04.2023 registered with Jinsi Police Station, Dist. Aurangabad for the offences punishable under Sections 302, 307, 323, 143, 147, 148, 149, 201 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 person acquainted with the crime.
 - c. The applicant shall visit the concerned police station on 15th of every month between 10.00 am to 02.00 pm till conclusion of the trial.
- (iii) Application is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE