

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.324 OF 2022

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Shaikh Salim Shaikh Yaqub

Alias Chamda

... Applicant

V/s.

The State of Maharashtra

... Respondent

WITH

INTERIM APPLICATION NO.3711 OF 2022

IN

BAIL APPLICATION NO.324 OF 2022

Imtiyaz Khan Amanullah Khan

... Applicant

In the matter between

Shaikh Salim Shaikh Yaqub

Alias Chamda

... Applicant

V/s.

The State of Maharashtra

... Respondent

Mr. Ashok Mundargi, Senior Advocate i/by Mr. Hasnanin Kazi, Ms. Shraddha Vavhal and Zeeshan Khan i/by Taha (Musaddique) for the applicant in ABA.

Ms. Supriya Kak for the Applicant in IA.

Mr. P.H. Gaikwad, APP for the respondent/State.

Mr. Amol Manik Shinde, Police Naik, Malegaon City Police Station, is present.

CORAM : AMIT BORKAR, J.

DATED : JULY 24, 2023

P.C.:

- 1.** This is an application under Section 439 of the Criminal Procedure Code, 1973 seeking bail in connection with C.R. No.27 of 2021 registered with Malegaon Police Station for offences punishable under Sections 302 and 352 read with Section 34 of the Indian Penal Code, 1860.
- 2.** According to prosecution, the incident occurred on 21 April 2021 around 9.45 p.m. According to prosecution, accused Nos.1 and 3 stabbed the deceased whereas accused No.2 caught hold of the deceased. The postmortem report indicates incised wound on the person of the deceased. The first information report was lodged on 22 April 2021. Statements of eye-witnesses were recorded on 22 April 2021.
- 3.** The learned Sessions Judge rejected the application filed by the applicant by order dated 18 November 2021 relying on the statements of eye-witnesses, resultant injuries as shown in the postmortem report and other material on record.
- 4.** Learned Senior Advocate on behalf of the applicant submitted that the blood stain clothes of the applicant were not recovered nor there is recovery of knife. The statement of witness Mohammad Jabir Mohammad Yaqub Alias Guddu which does not form part of the charge-sheet indicates that accused persons are falsely implicated. According to him, therefore, the material on record is sufficient to indicate that the applicant has been falsely implicated.
- 5.** Per contra, learned APP and learned Advocate for the victim

supported the prosecution's case relying on statement of eye-witnesses, postmortem report and other material on record.

6. On perusal of the charge-sheet and material on record, it appears that the statements of eye-witnesses are consistent with the manner of assault described in first information report. Specific active role is attributed to the applicant of stabbing the deceased. Postmortem report indicates deep incised wound in addition to two cut lacerated wounds by sharp pointed object. The statements of eye-witnesses were recorded on the next day of incident. On overall reading of the material on record, prima facie involvement of the applicant is apparent. However, ultimately it is for the prosecution to prove the charge during trial.

7. Considering active role assigned to the applicant supported by eye-witnesses and medical evidence, no case for release under Section 439 of the Criminal Procedure Code, 1973 is made out.

8. The bail application accordingly stands rejected. No costs.

9. In view of disposal of the bail application, nothing remains to be adjudicated in the interim application and the same stands disposed of accordingly.

(AMIT BORKAR, J.)