



PMB

9.ba.791-23.odt

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

BAIL APPLICATION NO.791 OF 2023

MD. SALEEM ZAFAR SHAIKH @ AKHTAR

ALAM SHAIKH URF SAALIM

..APPLICANT

VS.

THE STATE OF MAHARASHTRA

..RESPONDENT

Adv. Mateen Shaikh a/w Adv. Sharif Shaikh, Adv. Mohammed Arshad Shaikh, Adv. Razique Shaikh, Adv. Muskan Shaikh, Adv. Afrin Khan, Adv. Parvez Inamdar, Adv. Aqdas Ansari and Adv. Muzammil Shaikh for the applicant.
Ms. Veera Shinde, APP for the State.
PI Adinath A. Gawade, Mulund Police Station.

CORAM : M. S. KARNIK, J.

DATE : SEPTEMBER 25, 2023

P.C. :

1. Heard learned counsel for the applicant and learned APP for the State.
2. This is an application for bail in respect of the offence punishable under Sections 302, 201, 34 of the Indian Penal Code (hereafter 'IPC' for short) and under Sections 37(1) (A), 135 of Maharashtra Police Act registered on 03.01.2022 vide C.R. No.4 of 2022 with Mankhurd Police Station.
3. The date of the incident is 01.01.2022. The applicant is the accused no.1. The applicant was arrested on

03.01.2022. The prosecution case is that the daughter of the accused No.1 when she was at home was molested and inappropriately touched by the victim. The victim was working as a Cook. The accused No.2 is the wife of accused No.1. The accused were not at home when the incident took place. When the accused came back home, their daughter narrated the aforesaid incident to the accused. The accused No.1 became angry and went out of the house. He came back home after ten to fifteen minutes in a drunken state and started assaulting the victim with a bamboo and plastic pipe. The accused No.2 tried calling the daughter of the victim by informing her that the accused No.1 is assaulting the victim and that she should take him home immediately. After the victim became unconscious, the accused panicked. They dragged the victim out of the house and left him on a footpath. The victim was noticed in an unconscious state by a passerby. He was taken to the hospital where he was declared dead on admission.

4. Learned APP vehemently opposed the application for bail. Learned APP submitted that the post mortem notes

indicate several injuries. According to her, this cannot be a case of sudden and grave provocation for the applicant to claim the benefit of the exception.

5. I have perused the statement of the twelve years and nine months old daughter of the accused, which statement is also relied upon by the prosecution. The accused No.2 has been enlarged on bail. The accused No.1 was arrested on 03.01.2022 and is now in custody for more than one year and eight months. In the facts and circumstances of the present case and having regard to the fact that the applicant is in custody for more than one year and eight months with no possibility of the trial commencing and concluding any time soon, I am inclined to enlarge the applicant on bail. Prima facie the intention does not appear to commit the murder of the victim. Further, prima facie this appears to be a case of sudden and grave provocation. There are no criminal antecedents reported against the applicant. The observations are prima facie for consideration of this application. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant-Md. Saleem Zafar Shaikh @ Akhtar Alam Shaikh urf Saalim in connection with C.R. No.4 of 2022 registered with Mankhurd Police Station shall be released on bail on his furnishing P.R. Bond of Rs.25,000/- with one or more sureties in the like amount.
- (c) The applicant is permitted to furnish cash bail surety in the sum of Rs. 25,000/- for a period of six weeks in lieu of surety.
- (d) The applicant shall attend the Investigating Officer of Mankhurd Police Station once in two months i.e. on first Monday of every alternate month between 11.00 a.m. and 1.00 p.m. commencing from October 2023.
- (e) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.
- (f) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

6. The application is disposed of.

(M. S. KARNIK, J.)