



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

BAIL APPLICATION NO.3417 OF 2021

1. Mukhtar Ahmed Vasiullah
Shaikh
2. Rizwan Ehsanali Shaikh

...Applicants

(The application is dismissed as withdrawn as against
Applicant No.1 vide order dated 18/08/2023)

Versus

The State of Maharashtra

...Respondent

...

Mr. Shyamrishi Pathak for the Applicants.

Mr. R.M. Pethe, APP for the Respondent-State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED :19th AUGUST, 2023.

P.C.:-

1. By this application under Section 439 of the Cr.P.C., the Applicant No.2, who is facing trial in Special Case No.34 of 2021 pending on the file of learned Special Judge, Greater Bombay, seeks enlargement on bail. The said case arises from C.R. No.481 of 2020 registered with Shivaji Nagar Police Station, Mumbai, for the offences punishable under Sections 141, 143, 144, 147, 148, 307, 341, 506(2) r/w 149 of the IPC, Sections 4, 25 and 27 of the Arms Act and Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999.

2. Heard Mr. Shyamrishi Pathak, learned counsel for the

Applicant and Mr. R.M. Pethe, learned APP for the Respondent -State. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

3. The case of the prosecution in brief is that on 16/09/2020 the co-accused Mukhtar and others assaulted the Complainant by means of swords and stones. The only allegation against the Applicant No.2 herein was that he was armed with sword and that he had threatened the persons, who were trying to help the injured. Though the learned APP has stated that the Applicant No.2 is also an accused in Crime No.316 of 2016, a perusal of the said charge-sheet shows that one Rizwan, whose full name and address is not disclosed, is shown as an absconding accused.

4. Learned counsel for the Applicant No.2 has placed on record copy of the Aadhar Card, which shows his year of birth as 2004, which fact prima facie indicates that the Applicant is 19 years of age. The trial has just begun and the first witness is being examined. It is stated that over 40 witnesses have been cited and the trial is not likely to conclude within a reasonable time. In such circumstances, prolonged incarceration will bring the Applicant in contact with hardened criminals and the same

will promote recidivism.

5. Considering the role attributed to the Applicant No.2, his age and also there being no prima facie material to show his link with the organised crime syndicate, in my considered view this would be a fit case to exercise discretion under Section 439 of the Cr.P.C. Hence, the application is allowed on the following terms and condition:-

- (i) The Applicant No.2, who is facing trial in Special Case No.34 of 2021, arising from C.R. No.481 of 2020 registered with Shivaji Nagar Police Station, Mumbai, is ordered to be released on bail on executing PR bonds in the sum of Rs.30,000/- with one or two sureties to the like amount.
- (ii) The Applicant No.2 shall not interfere with the First Informant and or other witnesses and shall not tamper with the evidence in any manner;
- (iii) The Applicant No.2 shall attend the Trial Court on each and every date of hearing unless specifically exempted;
- (iv) The Applicant No.2 shall keep the Trial Court informed of his current address and mobile contact

numbers, and /or change of residence or mobile details, if any, from time to time.

6. The application stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)