

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3128 OF 2022**

Mohd. Mubarak Samsuddin Shaikh ..Applicant

VS.

The State of Maharashtra ..Respondent

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Mr. Vinod Kashid for the Applicant.

Mr. S. V. Gavand, APP for the State.

Mr. Vinod Vasave, API, Worli Police Station, Mumbai is present.

CORAM : M. S. KARNIK, J.

DATE : JANUARY 18, 2023

P.C. :

1. Heard learned counsel for the applicant and learned APP for the State.

2. This is an application for bail by the applicant-Mohd. Mubarak Samsuddin Shaikh in connection with C.R. No.696 of 2021 dated 16/06/2021 registered with Worli Police Station, Mumbai for the offence punishable under Sections 302 read with Section 34 of the Indian Penal Code, 1860 (hereafter "the IPC", for short).

3. The co-accused i.e. Parvez Akbar Shaikh has been released on bail by this Court by an order dated 31/03/2022. The order reads thus :-

"1. This is an application under Section 439 of Cr.P.C. filed by the aforesaid Applicant, who was arrested in C.R. No.696 of 2021 registered with Worli Police Station, Mumbai for offences punishable under Sections 302 r/w. 34 of the IPC.

2. Mr. Vinod Kashid, learned counsel for the Applicant submits that the Applicant is a 19 years old boy and that he has no criminal antecedents. He submits that the incident was sudden and without any provocation and without any intention to cause death of the deceased Bilal. He therefore contends that an offence under Section 302 of the IPC is not made out. He further contends that the trial has not yet commenced. Considering the above facts and circumstances, the Applicant be released on bail.

3. Per contra, Ms A. A. Takalkar, learned APP submits that there is prima facie material to show the involvement of the Applicant in aforesaid crime. She further states that the deceased had suffered 32 injuries and that considering the gravity of the offence, the Applicant is not entitled for bail.

4. Perused the records and considered the submissions advanced by the learned counsel for the respective parties.

5. The records reveal that father of the deceased had lodged a report on 16/06/2021 stating that his son Bilal had come home in an injured condition. On the next day his son informed him that he had committed theft in the house of Husain Shaikh and the said Hussain Shaikh and his two brothers and one of their friends chased him and assaulted him with hockey sticks and iron rods etc. Said Bilal was admitted in the hospital and he expired on 17/06/2021 while undergoing treatment. The post mortem report reveals that the deceased had sustained as many as 34 injuries, in the nature of abrasions, contusions and laceration. None of these injuries is on the vital part of the body. The doctor has opined that said Bilal had expired due to shock

following multiple superficial to deep contusions all over the body.

6. The eye witnesses have made a general statement that the deceased was assaulted by kicks and blows and bamboo sticks. These witnesses have not claimed that the Applicant had inflicted injuries by a stick or rod. As stated above, death of Bilal was not pre-planned. The incident had occurred on the spur of the moment as the Bilal was caught committing theft in the house of the co-accused. In the very nature of things, the Applicant could not have entertained an intention or common intention to cause his death. It is stated that the charge is not yet framed and that the trial will not be concluded in the near future considering the enormous pendency before the Court. Considering the nature of accusation and the fact that the Applicant is a young boy of 19 years of age, in my view this is a fit case for grant of bail."

4. The age of the applicant is 21 years. There are no criminal antecedents reported against the applicant. The charge-sheet has been filed and the investigation is complete. The charge has not yet been framed and the trial is likely to take long time to conclude. On the ground of parity even the applicant is entitled to be released on bail.

5. Hence, the following order :-

ORDER

(a) Application is allowed.

(b) Applicant-Mohd. Mubarak Samsuddin Shaikh shall be released on bail in connection with C.R. No.696 of 2021 registered with Worli Police Station, Mumbai, on his furnishing P.R. Bond of Rs.40,000/- with one or two sureties in the like amount.

(c) The applicant be released on cash bail in the sum of Rs.40,000/- for a period of four weeks.

(d) The applicant shall report to the Worli Police Station on first Saturday of the month after every two months between 10.00 a.m. to 2.00 p.m.

(e) The applicant shall keep the Trial Court informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time.

(f) The applicant shall co-operate with the conduct of the trial and attend the Trial Court on all dates, unless exempted.

6. The Bail Application stands disposed of.

(M. S. KARNIK, J.)