



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

BAIL APPLICATION NO. 2473 OF 2023

SHAIKH WASEEM SHAIKH ISRAIL

@SIKANDAR KALYA

..APPLICANT

VS.

THE STATE OF MAHARASHTRA

..RESPONDENT

Adv. Danish Patel i/b Adv. Hemant Pawar for the Applicant.

Ms. Rutuja Ambekar, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : DECEMBER 12, 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 307, 143, 147, 148, 149 of the Indian Penal Code and Sections 4 and 25 of the Arms Act registered on 06/07/2022 vide C.R. No.119 of 2022 with Pawarwadi Police Station, Nashik.

3. My attention is invited to the order dated 27/07/2023 in respect of the co-accused- Shaikh Asif Shaikh Lateef @ Asif Shampoo Son of Shaikh Lateef who has been enlarged on bail by this Court vide Bail Application No. 783 of 2023. For ease of convenience, the same is reproduced as under:

"1. This is an application under Section 439 of the Criminal Procedure Code, 1973 seeking bail in connection with C.R. No.119 of 2022 registered with Pawarwadi Police Station, at Malegaon, Nashik for offences punishable under Sections 307, 143, 147, 148, 149 of the Indian Penal Code, 186 read with Section 4 and 25 of the Arms Act, 1959.

2. After completion of the investigating, the Investigation Agency has filed charge-sheet. On perusal of the charge-sheet, it appears that role attributed to the applicant is that the applicant assaulted the injured on back by fighter. Apart from Section 307, the applicant is charged with Section 149. In the facts of the case, the common object needs to be proved by the prosecution during trial. However, the nature of assault is on the back of the injured and there is no corresponding back injury shown in the medical certificate. Applicant was arrested on 10th July 2022, and it is unlikely that the trial will be completed in near future. The applicant has made out a case of release on bail."

4. Learned counsel for the applicant states that the role of the applicant is similar to that of co-accused- Shaikh Asif Shaikh Lateef @ Asif Shampoo Son of Shaikh Lateef and claims parity.

5. Learned APP while opposing the application submitted that the applicant is not justified in claiming parity as the specific role is attributed to the applicant. The applicant used a sword and as per the version of the eyewitness, the applicant assaulted the victim with a sword on his back. On perusal of the injury certificate, it is revealed that there is one CLW on the shoulder.

6. The injury was reported to be simple in nature. The grievous injury is not attributed to the present applicant. It is observed by this Court in the order dated 27/07/2023 that the common object needs to be proved by the prosecution during the trial.

7. In view of the nature of the injury suffered by the injured witness, I am inclined to enlarge the applicant on bail as the investigation is complete and the charge sheet is filed. There are no criminal antecedents reported. The applicant does not appear to be a flight risk. The applicant is in pre-trial custody since 10/07/2022 for more than 1 year and 5 months. Hence, the following order :-

ORDER

(a) The application is allowed.

(b) The applicant- Shaikh Waseem Shaikh Israil @ Sikandar Kalya in connection with C.R. No.119 of 2022 registered with Pawarwadi 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 6 weeks in lieu of surety.

(d) The applicant shall attend the Investigating Officer of Pawarwadi police station once in a month, first Monday of every month, between 11.00 a.m. and 1.00 p.m.

(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.

(g) Except for the purpose of reporting to the Investigating Officer, the applicant shall not enter into the jurisdiction of Pawarwadi Police Station after being released on bail, till the trial concludes.

(h) The applicant shall attend the trial regularly. The applicant shall co-operate with the trial Court and shall not seek unnecessary adjournments.

8. The application is disposed of.

(M. S. KARNIK, J.)