

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

BAIL APPLICATION NO. 4065 OF 2021

Amir Rehmat Baig @ Kalu

... Applicant

v/s.

The State of Maharashtra

.... Respondent

Mr. Ashish Dubey a/w. Ms. Vinita Jain, Mr. Ashok Chopra and
Ms. Ankita Upadhyaya for the Applicant in BA/4065/2021.
None present for the Applicant in BA/4284/2021.
Mr. S.V. Gavand, APP for the State.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 21st APRIL, 2023.

P. C. :-

. This is an Application under section 439 of Cr.PC. filed by the aforesaid Applicant who is arrested in C.R.No.265/2020 registered with Dharavi Police Station, Mumbai for offences punishable under sections 143, 144, 147, 148, 302, 307, 323, 324, 326, 504 r/w. 149 of the Indian Penal Code, sections 4, 25 of Arms Act and under sections 37(1)(a), 135 of Maharashtra Police Act.

2. Heard learned counsel for the Applicant. He submits that the Applicant was not named in the FIR. He submits that there is considerable delay in recording the supplementary statement. He states that the witnesses have implicated one Kalu and that the

Investigating Agency has not conducted identification parade and that there is no proof to show that the Applicant is the same person who is referred to as Kalu. He further submits that CCTV footage also does not show presence of the Applicant at the spot of the incident.

3. Per contra, learned APP submits that the witnesses have categorically stated that the Applicant who is also known as Kalu and others had come armed with weapons and inflicted injuries on the deceased – Afzal. Learned APP states that the Applicant has not disputed that he is also known as Kalu. He states that the identity of the Applicant is not in dispute, hence, there was no necessity to hold identification parade. He submits that the material on record shows involvement of the Applicant in commission of a serious offence and hence, the Applicant is not entitled for bail.

4. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

5. The aforesaid crime was registered pursuant to the FIR lodged by Aman A. Shaikh. The facts narrated in the FIR prima facie reveal that on 27/06/2020 between 00:05 to 00:30 hours, while the deceased Afzal and others were sitting on a platform near Dr. Babasaheb

Ambedkar Maidan, Dharavi, several persons who are named in the FIR along with 8 to 10 unknown persons came armed with weapons and inflicted several injuries on Afzal Shaikh. The first informant has stated that the assailants assaulted him and his cousin when he tried to intervene and prevent the assailants from inflicting injuries on Afzal Shaikh. He has stated that no person from the locality came to their rescue since they were scared of the assailants who were armed with dangerous weapons.

6. The first informant had not disclosed the name of the Applicant in the FIR. Nevertheless, he has stated that the persons named in the FIR were accompanied by 08 to 10 persons. In his supplementary statement, he has stated that the Applicant who is also known as Kalu, was also involved in the incident and that though he had mentioned his name, the same was not recorded in the FIR. The first informant has also identified the Applicant in the identification parade.

7. The statements of the eye witnesses – Anil Ajaykumar Karingu and Nafisa Shaikh prima facie reveals that the Applicant was armed with weapons and that he too was involved in inflicting injuries on the deceased. It is true that the witnesses had identified the Applicant as

Kalu. Though the learned counsel for the Applicant states that the Applicant is not known as Kalu, no such statement is made in the Application under consideration. In fact, in the cause title itself, the name of the Applicant is shown as Aamir Rehmat Baig @ Kalu.

8. The post mortem report reveals that there were as many as 36 injuries on the deceased, most of which were incised wounds and stab injuries mostly on the vital parts of the body. The death of the deceased was due to hemorrhagic shock following multiple fractures. The medical report prima facie reveals that the deceased Afzal Shaikh was murdered in a most brutal manner.

9. The material on record prima facie reveals that the Applicant is involved in commission of brutal murder of Afzal Shaikh. Considering the gravity of the offence, I am not inclined to exercise discretion under section 439 of Cr.P.C. in favour of the Applicant. Hence, the Application is dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)

**PREETI
H JAYANI**

Digitally signed by
PREETI H JAYANI
Date: 2023.04.27
14:14:41 +0530