

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 2756 OF 2023

Farooque Mahmoodmiya Quzi

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Majeed Memon a/W Mr. Toseph, Tapish Jain, Mr. Mateen Qureshi and Khalil Gipkar Advocate for Applicant.

Mr. Amin Solkar, Special P. P. along with Mrs. M. M. Deshmukh APP a/w Sumaiya Khan for Respondent-State.

CORAM : PRAKASH D. NAIK, J.

DATE : 15th DECEMBER 2023

P.C.:-

1. This is the second application for bail before this Court in connection with C.R. No. 79 of 2020 registered with Mahad City Police Station, for offences punishable under Sections 304, 304-A, 337, 338 read with 34 of the Indian Penal Code, 1860. Subsequently, sections 420, 471 and 201 of IPC were added.

2. Case of the prosecution is that, the building namely 'Tarik Garden' had collapsed and it has resulted in casualties. On account of collapse, 16 persons died and 9 persons were injured. The FIR was registered. Investigation proceeded. Several persons were arrested. Charge-sheet was filed.

3. The previous application viz. Criminal Bail Application No.1055 of 2021 was rejected by this Court vide order dated 3rd January 2023.

4. Learned Advocate for the applicant submitted that, the applicant is in custody for a period about three years from the date of arrest. Even after rejection of previous application for bail, the applicant is in incarceration for a period of one year. There is no progress in the trial. Vide order dated 3rd January 2023, this Court had granted bail to the co-accused Vivek Keshav Dongare and Irfan Hussainmiya Qazi. The application preferred by applicant and the other accused Yunus Razzak Shaikh were rejected. Co-accused Yunus Razzak Shaikh had preferred Special Leave Petition before the Apex Court. He has been granted bail by Hon'ble Supreme Court vide order dated 17th March 2023. The applicant preferred Special Leave Petition before the Apex Court challenging the order dated 3rd January 2023 passed by this Court and sought bail vide order dated 29th March 2023, the Special Leave Petition was withdrawn with liberty to take such steps as may be permissible in law. It is submitted that, role ascribed to co-accused Yunus Shaikh is more serious than the applicant. The observations made by this Court in paragraph 20 and 21 of order dated 3rd January 2023 with regards to role of applicant are incorrect. Statements of witnesses recorded during the course of investigation indicate that Yunus Shaikh has played prime role. He is on bail. Trial is delayed as proceedings are stayed since some of the accused had challenged the order passed by trial Court rejecting application for discharge. Hence, applicant may be directed to be released on bail.

5. Learned Special Public Prosecutor Mr.Solkar submitted that the previous application preferred by the applicant has been rejected by this Court vide order dated 3rd January 2023 by assigning detailed reasons. There is no change in circumstance to entertain the present application. There is sufficient material to show the involvement of the applicant. The applicant had preferred Special Leave Petition before the Apex Court which has been withdrawn vide order dated 29th March 2023 as the Hon'ble Apex Court was not inclined to grant bail to the applicant. The applicant and the co-accused had preferred Criminal Revision Applications before this Court challenging the order passed by trial Court rejecting applications for discharge. The applications preferred by co-accused are pending whereas the application qua applicant was withdrawn. The interim order was passed five months ago and applications were not pursued by the accused. Stage before the trial Court is for framing charge. Hence, application for bail may be rejected.

6. It is pertinent to note that, previous application preferred by the applicant is rejected by this Court vide order dated 3rd January 2023. This Court has considered the merits of case against applicant while rejecting his previous application. The Hon'ble Supreme Court has granted bail to the co-accused Yunus Shaikh vide order dated 17th March 2023. Paragraph 4 of the said order indicate that, bail was granted by considering the fact that, he was in custody for two and half years. He was not the person, who

constructed the building but was entrusted with maintenance thereof, it is not in dispute that some of the family members of the accused themselves have become victims of the unfortunate accident. It is pertinent to note that, the applicant preferred petition challenging the order dated 3rd January 2023 passed by this Court before Supreme Court. Vide order dated 29th March 2023, petition was allowed to be withdrawn with liberty to take such steps as permissible in law. The facts remains that, the Hon'ble Apex Court did not grant bail to the applicant. The applicant does not assign any reason for withdrawal of petition challenging order passed by this Court. I do not find any change in circumstance to entertain this application. In the light of previous order and the circumstances as stated above, the application has to be rejected.

ORDER

Criminal Bail Application No. 2756 of 2023 stands rejected.

(PRAKASH D. NAIK, J.)