

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

***BAIL APPLICATION NO.3022 OF 2023***

|                          |               |
|--------------------------|---------------|
| Salam @Abu Salim Khan    | ...Applicant  |
| Versus                   |               |
| The State of Maharashtra | ...Respondent |

Mr. Amrish Salunke a/w Ms. Isha Saglani, for the Applicant.

Mr. J. P. Yagnik, Addl.P.P for the Respondent -State.

API – Anant Kamble a/w PSI – Wage, are present.

***CORAM : REVATI MOHITE DERE, J.***

***DATE : 15<sup>th</sup> DECEMBER, 2023***

**ORAL ORDER:**

1. Heard learned counsel for the parties.
2. This is the second bail application preferred by the applicant, seeking his enlargement on bail in connection with C.R. No.332 of 2016 registered with the Marine Drive Police Station, Mumbai, for the alleged offences punishable under Sections 307, 147, 143, 323 r/w 34 of the Indian Penal Code.

3. The first bail application preferred by the applicant was dismissed as withdrawn as the Court was not inclined to enlarge the applicant on bail. However, the trial of the applicant was expedited. The same is reflected in the order dated 6<sup>th</sup> June 2019 passed by this Court in the applicant's first bail application being Criminal Bail Application No.1933 of 2018.

4. Learned counsel for the applicant states that despite the trial being expedited, there is hardly any progress in the same. He states that the applicant is in custody for the last 7 years with no prospect of the trial concluding in the immediate near future.

5. Learned APP opposes the application.

6. Perused the papers. According to the prosecution, two incidents took place on the intervening night of 11<sup>th</sup> and 12<sup>th</sup> December 2016. According to the complainant – Akash Yadav, he and his friends, including deceased – Mayur had gone to Marine Drive Chowpatty, for a drive. He has stated that at around 11:00 p.m.

they reached the Marine Drive; that when they were chit-chatting, some boys from Pimpaleshwar Chawl Zopatpatti came there i.e. Mayur Khan, Bhola Khan, Abu Khan (applicant), Nephil Khan; that Bhola Khan told Nagraj, why they had come to their area, to which Nagraj replied that this area does not belong to them. Pursuant to which, there was an altercation/quarrel between the two groups by fists. As there was a bleeding from the complainant's lip, a complaint was lodged with the Marine Drive Police Station against Mayur Khan, Bhola Khan, Abu Khan (applicant), Nephil Khan. The complainant has further alleged that when he went home to Girgaon, his mother asked him what had happened on seeing blood oozing from his lip, pursuant to which, he disclosed the incident; that his mother was enraged on hearing the quarrel, pursuant to which his mother, Mayur (deceased), Nagraj went to Pimpaleshwar Chawl Zopatpatti, where Mayur Khan, Bhola Khan, Abu Khan (applicant), Nephil Khan were residing at about 12:30 p.m. on 12<sup>th</sup> December 2016 to question them. The complainant has further stated that his mother started abusing loudly; that Mayur Khan, Bhola Khan, Abu Khan (applicant), Nephil Khan

were sleeping in an open ground and that they woke up on hearing the shouts; that they picked up wooden bamboos and sticks from the spot and assaulted the complainant, his mother and Mayur with the same. It is alleged by the complainant that Mayur Khan and Abu Khan (applicant) assaulted Mayur on his head, as a result of which, he sustained injuries. The other accused are also alleged to have assaulted the complainant, Nagraj and the complainant's mother. In the cause of death column it is stated “complications following head injury in an operated case of left fronto temporo parietal decompression craniotomy with duroplasty.” It appears from the aforesaid that the incident took place at the spur of the moment, after the complainant's mother went to question the accused with respect to the incident that had taken place a few hours prior. The applicant is in custody for about 7 years, with no prospect of the trial commencing in the immediate near future. The applicant has no antecedents.

7. Considering the aforesaid, the application is allowed and the applicant is enlarged on bail, on the following terms and conditions:-

**ORDER**

- (i) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.20,000/- with one or two sureties in the like amount;
- (ii) The applicant shall attend the concerned Police Station on the first Saturday of every month from 10:00 a.m. to 1:00 p.m. till the conclusion of the trial;
- (iii) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;
- (iv) The applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time

to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(v) The applicant to cooperate with the conduct of the trial and attend the trial Court on all dates, unless exempted;

(vi) The applicant shall file an undertaking with regard to clauses (ii) to (v) in the trial Court, within two weeks of his release;

(vii) If there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

8. The application is allowed in the aforesaid terms and is accordingly disposed of.

9. It is made clear that the observations made herein are prima facie, and the trial Court shall decide the case on its own merits,

in accordance with law, uninfluenced by the observations made in this order.

10. All concerned to act on the authenticated copy of this order.

***REVATI MOHITE DERE, J.***