



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

BAIL APPLICATION NO.4015 OF 2023

ASHRAF HARUN SHAIKH ..APPLICANT
VS.
THE STATE OF MAHARASHTRA ..RESPONDENT

Adv. Niranjan Mundargi i/b Adv. Keral Mehta for the
applicant.

Adv. Rahul R. Shelke for the Intervener.

Ms. Veera Shinde, APP for the State.

API K.R. Patil, Narpoli Police Station.

CORAM : M. S. KARNIK, J.

DATE : DECEMBER 19, 2023

P.C. :

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

2. This is an application for bail in respect of the offence
punishable under Sections 302, 201, 120-B and 34 of the
Indian Penal Code, Sections 3, 25 and 27 of the Indian
Arms Act and Sections 37(1) and 135 of the Maharashtra
Police Act registered on 08/12/2022 vide C.R. No. 757 of
2022 with Narpoli Police Station, Thane.

3. There are in all 8 accused. The applicant is accused

No.3. It is the case of the prosecution that there was a previous enmity between the deceased and the accused. The witnesses' statements indicate that 7 to 8 years prior to the incident the deceased had assaulted one accused. Thereafter, the enmity between the accused and the deceased went on increasing. It is alleged that there were earlier 2 attempts made to kill the deceased. The date of the incident is 07/12/2022. The allegation is that the deceased was fired by two assailants. Accused Nos. 1 and 2 were reportedly present at the scene of the incident. The firing was by the accused No.2 with the revolver.

4. Learned APP while opposing the application submitted that the materials on record are sufficient to demonstrate the active involvement of the present applicant in the present crime. My attention is invited to the statement which is at page No. 193 of the paperbook of one witness - Ganesh Balaram Shivgan. It is stated by him that 7 to 8 years prior to the alleged incident he had overheard the plan of the accused including the present applicant to eliminate the deceased. It is submitted that the application

be rejected. The date of the incident is 07/12/2022. The statement of the said witness Ganesh was recorded on 28/12/2022.

5. Learned counsel for the intervener appeared and opposed the applicant. Apart from adopting the submissions of the learned APP, learned counsel for the intervener submitted that there are criminal antecedents against the applicant. It is further submitted that prior to the alleged incident the deceased was threatened by the applicant. It is further submitted that the family of the deceased and the witnesses will feel threatened if the applicant is enlarged on bail and the possibility of threats can not be ruled out.

6. So far as the applicant is concerned, it is the allegation that the applicant is involved in a criminal conspiracy. It is alleged that the present applicant who is accused No.3 handed over certain sum of money to accused No.4 who in turn engaged the services of accused Nos. 1 and 2 to kill the deceased. Learned APP relied upon some bank account details to indicate that there are monetary transactions between the present applicant and accused No.4. I find that

it is the prosecution's case that the accused know each other for long number of years.

7. Learned counsel for the applicant submitted that the applicant is even willing to stay out of Thane District till the conclusion of the trial in case he is enlarge on bail.

8. The applicant was arrested on 12/01/2023 and is now in custody for more than 11 months. The case against the applicant is based on circumstantial evidence. The allegation is that all the accused including accused Nos. 1 and 2 were on inimical terms with the deceased. Considering the nature of the materials against the applicant and as the case is based on circumstantial evidence, *prima facie*, in my opinion, the applicant can be enlarged on bail. In view of the apprehension expressed by learned counsel for the intervener, certain stringent conditions need to be imposed on the applicant. There are no criminal antecedents reported. Hence, the following order :-

ORDER

(a) The application is allowed.

(b) The applicant- Ashraf Harun Shaikh in connection with C.R. No. 757 of 2022 registered with Narpoli 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 shall attend the Investigating Officer of Narpoli police station once in a month every first Sunday of the month between 11.00 a.m. and 1.00 p.m.

(d) 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. The applicant shall not contact, threaten or intimidate the complainant and the witnesses. If it is noticed that the applicant is indulging in any such activities the same shall be viewed seriously.

(e) 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.

(f) Except for attending the trial and for the purpose of reporting to the Investigating Officer, the applicant shall not enter Thane District after being released on bail, till further orders of the trial Court.

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

(h) If any of the conditions are breached, it is always open for the prosecution and the informant to apply for cancellation of this bail.

(i) Considering the nature of the accusations, if the family members of the deceased and the witnesses apply for witness protection the same shall be considered on its own merits and in accordance with law.

(j) The applicant shall surrender his passport to the trial Court. If the applicant does not have a passport, the applicant shall file an affidavit before the trial Court to that effect.

9. The application is disposed of.

10. The observations made are *prima facie* and shall not influence the trial Court.

(M. S. KARNIK, J.)