



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

7 BAIL APPLICATION NO. 372 OF 2024

SHAIKH FARUKH SHAIKH CHANDSAB
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Avinash D. Hande.
APP for Respondent/State : Mr. Mukesh K. Goyanka.
...

CORAM : **SANJAY A. DESHMUKH, J.**
DATE : 15th April, 2024.

P.C.:

1 Heard.

2 This is an application, under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail in connection with Crime No.68 of 2023, registered with Islapur Police Station, District Nanded, for the offences punishable under Sections 302, 307, 143, 147, 148, 149 and 427 of the Indian Penal Code and under Section 4/25 of the Arms Act.

3 The informant has averred in the report that when the informant and others were traveling in the night time, this applicant and other co-accused were found suspiciously traveling by their vehicle. They stopped their vehicle and inquired with them as to who they are and where they are going. That time, the applicant and other nine

accused assaulted the informant and others by knife etc. Shekhar Rapelli died in that incident and others are seriously injured. Therefore, the report was lodged.

4 The learned counsel for applicant submitted that the applicant is entitled for bail on the ground of parity as the co-accused are released on bail. He further pointed out that the prosecution has come with two different theories, one out of it is silent in the report. He further submitted that the applicant has no criminal antecedents, he will not flee away from the trial and the trial will take long period. It is lastly prayed to allow the application.

5 The learned APP for the State strongly opposed the application and submitted that the applicant is the main accused, who assaulted many injured, in which Shekhar Rapelli died, because of the assault of this applicant. He submitted that the Trial Court has rightly rejected the application. He submitted that there is strong direct evidence against this applicant. The possibility of pressurizing the prosecution witnesses cannot be ruled out. At the most the trial can be expedited. It is lastly prayed to reject the application.

6 The learned APP for the State is relying upon the authority in the case of ***Neeru Yadav Vs. State of Uttar Pradesh and another, (2016) 15 Supreme Court Cases 422***, in which the Honourable

Supreme Court held as under:-

“Held, factors to be considered while granting bail are: (i) nature of accusation and severity of punishment in cases of conviction and nature of supporting evidence; (ii) reasonable apprehension of tampering with witnesses for apprehension of threat to complainant; and (iii) prima facie satisfaction of court in support of charge – On facts held, since R-2 was a history-sheeter involved in heinous crimes, impugned judgment granting him bail only on grounds of parity unsustainable since though crime is committed against individual but on occasions and in certain offences it accentuates and cause harm to society – Besides, despite bail order passed by High Court R-2 was still in jail because of his involvement in other cases – Penal Code, 1860, Ss. 302, 147, 148, 149, 307, 394, 411, 454, 506, 120-B r/w 34.”

7 Perused the charge-sheet, particularly, the report and the statements of witnesses. The co-accused are released on bail by the Trial Court, however, considering the role of this applicant, his bail application is rejected by the Trial Court. The statements of witnesses show that the applicant and others have assaulted deceased Shekhar Rapelli and other witnesses by knife etc. Many injured are assaulted by this applicant, however, the statement of witness Dnyaneshwar Karlewad, paragraph 5, shows that this applicant and one of the co-accused Mukhtiyar assaulted Shekhar Rapelli by knife, who died in the incident. Apart from merit, considering the role of co-accused

Mukhtiyar and this applicant and considering the peculiar set of facts of the case, it is found similar. Therefore, the applicant is certainly entitled for bail, however, considering the fact that the applicant assaulted so many injured including deceased Shekhar Rapelli, some stringent conditions are to be imposed upon the applicant. Therefore, the applicant is entitled for bail on the principal that bail is rule and jail is exception. The application, therefore, deserves to be allowed on certain stringent conditions. Hence, the following order:-

ORDER

- I. The application is allowed.
- II. The applicant in connection with Crime No.68 of 2023, registered with Islapur Police Station, District Nanded, for the offences punishable under Sections 302, 307, 143, 147, 148, 149 and 427 of the Indian Penal Code and under Section 4/25 of the Arms Act, be released on bail on furnishing personal bond of Rs.50,000/- with surety of the like amount on following conditions:-
 - a) The applicant shall not pressurize the prosecution witnesses, in any manner.
 - b) The applicant shall not tamper with the prosecution evidence, in any manner.
 - c) The applicant shall not enter into village Chikhli, Taluka Kinwat, District Nanded, till the conclusion of trial.

8 If any breach of the above conditions is noticed by the Trial Court, the Trial Court is at liberty to proceed further to cancel the bail of this applicant without reference to this Court.

[SANJAY A. DESHMUKH, J.]

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