



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION 1061 OF 2024

Shaikh Mohammad Kaif

@ Dhar s/o Sk. Gous

.. Applicant

versus

The State of Maharashtra

.. Respondent

Mr. M. A. Granthi, Advocate for the Applicant.

Adv. R. R. Tandale, APP for the State.

CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 16th AUGUST, 2024.

PRONOUNCED ON : 20th AUGUST, 2024.

ORDER :

1. Applicant seeks regular bail in connection with Crime No. 0399/2022 registered with Airport Police Station, District Nanded, for the offences punishable under Sections 302, 323, 143, 146, 147, 148, 149 of the Indian Penal Code, Section 4/25 of the Arms Act and Section 135 of the Maharashtra Police Act.

2. The investigation was set in motion on the basis of the information given by Mr. Shaikh Iqbal who alleges that on 21.11.2022 the marriage reception of his son was arranged. Many guests visited at the reception. While the guests were served dinner,

accused persons rushed to the spot on motorcycle. They insisted for playing louder music. Sk. Mois i.e. the son of the informant refused to do so. Suddenly, accused persons dragged Sk. Mois to nearby place. Accused Mohd. Choli inflicted blow of dragon on the chest of of Sk. Mois and other accused persons hit him by iron rod. Sk. Mois suffered fatal injuries due to such assault. Consequently, the offence was registered against all the accused persons. The Applicant came to be arrested on 18.01.2023. Since then, he is behind the bar. The investigation progressed. Charge-sheet came to be filed. The Applicant moved Sessions Court for grant of bail vide application below exhibit 46 in Sessions Case No. 36/2023. The Sessions Court rejected his application vide order dated 06.11.2023. Hence, present application for grant of regular bail.

3. Mr. Granthi, learned counsel for the Applicant submits that this Court has already released co-accused persons from the same crime. He invites attention of this Court to order dated 31.08.2023 passed in Bail Application Nos. 1440/2023 and 1490/2023 thereby releasing accused Shaikh Amer @ Ammu s/o Shaikh Pasha and Mohammad Saker Mohammad Taher. He would further invite attention of this Court to the order dated 07.08.2023 in

Bail Application no. 1248/2023 by which accused Sohail Khan Navid Khan has been released on bail. Mr. Granthi would submit that the role of the Applicant being similar to the accused who are already enlarged on bail, the plea of bail on behalf of the Applicant needs to be accepted on ground of parity.

4. Learned APP vehemently opposes the application. She submits that the contents of First Information Report and the statements of witnesses clearly depict role of the Applicant in commission of offence. She would submit that the Applicant is hardened criminal. Apart from the present crime, there are six offences registered against him for causing bodily injuries etc. The release of Applicant would hamper smooth trial.

5. Having considered the submissions advanced, apparently, this Court directed release of accused Shaikh Amer @ Ammu and Mohammad Saker observing that accused Mohammad Choli is the prime accused and the blow attributed to him was responsible for causing death of the deceased. This Court further observed that so far as those applicants/accused are concerned, no specific role has been attributed against them in commission of

offence and even there is no recovery of weapon at their instance. So far as accused Sohail Khan is concerned, this Court observed that no specific role is attributed against him and iron rod recovered at his instance was not blood stained. So far as the role of present Applicant is concerned, the First Information Report depicts that the Applicant is named along with co-accused persons. They are alleged to have manhandled the son of informant. However, no overt act is attributed against them. The learned Sessions Court, while rejecting the plea of the Applicant observed that the possibility of tampering evidence cannot be ruled out.

6. On prima facie consideration of material in charge-sheet, except presence of the Applicant along with co-accused persons, no role is attributed to him particularly in assault against the deceased. The evidence on record does not show recovery of incriminating material from the Applicant to link his complicity in commission of offence. The Applicant is behind bar since 23.11.2022. True that there are criminal antecedents against the Applicant, however, that itself cannot be a ground to continue his detention in the present case, particularly when evidence in charge-sheet is bereft to make out strong case against Applicant.

7. Whether complicity of Applicant can be brought home applying Section 149 of Indian Penal Code would be the subject matter of trial. However, since accused Sohail Khan has been released by this Court vide order dated 07.08.2023 and his role is similar to that of the present Applicant, the Applicant deserves release on the principle of parity. Hence, the following order :-

ORDER

- (i) The Application is allowed.
- (ii) Applicant Shaikh Mohammad Kaif @ Dhar s/o Sk. Gaus be released on bail on furnishing P.B. and S.B. of Rs. 50,000/- (Rs. Fifty Thousand only), in connection with Crime No. 0399/2022 registered with Airport Police Station, District Nanded, for the offences punishable under Sections 302, 323, 143, 146, 147, 148, 149 of the Indian Penal Code, Section 4/25 of the Arms Act and Sections 135 of the Maharashtra Police Act.
- (iii) The Applicant shall not tamper prosecution evidence in any manner.

(iv) The Applicant shall attend the trial on each and every effective date.

(v) The Applicant shall not indulge in any criminal activity.

(S. G. CHAPALGAONKAR)
Judge

dyb