



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

909 BAIL APPLICATION NO.2301 OF 2023

Tofik Kadir Shaikh

VERSUS

The State Of Maharashtra

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Advocate for Applicant : Mr. Muthal Mahesh L.

APP for Respondent : Mr. P.S. Patil

Advocate for Assist to APP : Mr R.B. Dhakane

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CORAM : S. G. CHAPALGAONKAR, J.

Dated : January 12, 2024

PER COURT :-

1. The applicant seeks regular bail in connection with Crime No.313 of 2023 registered with Pachod police station, District Aurangabad for the offences punishable under sections 326 r/w 34 of the Indian Penal Code and u/s 4 and 25 of the Arms Act, 1959.

2. Investigation was set in motion on the basis of the information given by one Adam Sandu Shaikh r/o Khadgaon, Tq. Paithan, who alleges that on 7.8.2023, while he was standing near the house of one Rajamad Shaikh, accused persons arrived at the spot. Accused-applicant Tofik was holding rod in his hand. Initially he raised assault of rod on shoulder of the informant then hit sword on his head. Thereafter, accused Sadik Shaikh gave a blow of sword on left hand of the informant then accused Toufik gave a blow of knife

on his left hand. Due to such attack, he suffered multiple injuries. Based on such information, crime no.313 of 2023 came to be registered against accused persons for the aforesaid offenses. Applicant accused came to be arrested and subjected to police custody. The investigation progressed. On completion of the investigation, charge-sheet came to be filed against the applicant/accused and juvenile accused. The applicant is behind bar since 8.8.2023.

3. Mr. Muthal, learned advocate appearing for the applicant would submit that applicant has been falsely implicated in the aforesaid crime on account of previous enmity. Investigation in the matter is complete. Charge-sheet is filed. The applicant is behind the bar for more than five months. In facts of the case offense under section 326 may not attract. All the offenses are triable by the Court of Magistrate. Trial would take it's own course and indefinite incarceration of the applicant cannot be continued.

4. Learned A.P.P. as well as learned advocate appearing for the first informant strongly opposes the prayer.

5. Having considered the submissions advanced, it can be gathered that investigation in the matter is complete and charge-sheet is also filed. The applicant is detained for more than five months by time. Perusal of allegations in the FIR shows that the applicant was holding rod in his hand and gave first blow on shoulder of the informant. Further allegations are made that the applicant hit sword on head of

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the informant. In further allegations are against accused Sadik Shaikh having given blows of sword on left hand of the applicant. The applicant/accused is further alleged to have given a blow of knife on left hand of the informant. The provisional injury certificate shows that informant had suffered five injuries. One was suspected fracture on hand wrist, other injuries are simple. All the injuries are attributed to hard and blunt object. Apparently, there is no injury that can be attributed to use of sharp edge of sword or knife. Injury on the wrist is attributed to assault made by the Sadik Shaikh i.e. co-accused. Investigation papers shows recovery of iron rod and sword from the house of applicant under seizure panchama as per section 165 of the Criminal Procedure Code.

6. Although, there are the allegations in the FIR against the applicant. Statement of witnesses shows inconsistency as regards to his role in commission of offence.

7. Since investigation in the matter is over and charge-sheet is filed, further detention of the applicant would not necessary. He is behind bar for more than five months till this date. At this stage, learned APP so also Mr. Dhakne, learned advocate appearing for the applicant point out that there are criminal antecedents against the applicant. Even, it is sought to contend that the applicant has been released on bail in Special Case No.301 of 2021 with specific condition that he shall not engage in criminal activity. Said condition is flouted by the accused-applicant.

8. It appears that the applicant has been released on bail in that case in the year 2021. If there is violation of any condition of that bail it cannot be subject matter of inquiry in this application. Although there are criminal antecedents that can not be impediment for grant of bail. Considering nature of the allegations in the present case and role attributed against the applicant, his further detention is not necessary. Hence, case is made out for grant of bail. Hence, the order.

O R D E R

- i. Bail Application is hereby allowed.
- ii. The applicant - Tofik Kadir Shaikh be released on bail in connection with Crime No.313 of 2023 registered with Pachod police station, District Aurangabad for the offences punishable under sections 326 r/w 34 of the Indian Penal Code and u/s 4 and 25 of the Arms Act, 1959 on his furnishing P.B.&S.B. of Rs.50,000/- (Rs. Fifty Thousand) on the following conditions :-
 - a] The applicant shall not tamper the prosecution evidence.
 - b] The applicant shall attend each and every effective date of hearing before the trial Court.
 - c] The applicant shall not enter village Khadgaon, Tq. Paithan, District Aurangabad for a period of three months from the date of his release.

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- iii. Bail application is accordingly disposed off.

(S.G. CHAPALGAONKAR)
JUDGE.

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