

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

**INTERIM APPLICATION NO.2268 OF 2023
IN
CRIMINAL APPEAL NO.713 OF 2023**

Shakil A. Karim Tumake Applicant

versus

The State of Maharashtra & Anr. Respondents

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- Mr. Hrishikesh S. Shinde, Advocate for Applicant.
- Smt. Manisha R. Tidke, APP for the State/Respondent.

**CORAM : SARANG V. KOTWAL, J.
DATE : 20th JUNE, 2024**

P.C. :

1. This is an application for bail pending Appeal. The Applicant was the accused before Additional Sessions Judge, Solapur, in Sessions Case No.77 of 2017. At the conclusion of the trial, the Applicant was convicted for commission of offence punishable u/s 307 of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for 10 years and to pay a fine of Rs.2,000/- and in default of payment of fine to suffer simple imprisonment for two months. He was also convicted for

commission of offence punishable u/s 506 of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for six months and to pay a fine of Rs.500/- and in default of payment of fine to suffer further simple imprisonment for 15 days. He was directed to pay Rs.25,000/- as compensation to the informant. All the sentences were directed to run concurrently.

2. Heard Mr. Hrishikesh S. Shinde, learned counsel for the Applicant and Smt. Manisha R. Tidke, learned APP for the State.
3. The prosecution case is in respect of assault caused by the present Applicant on one Ismail with knife.
4. Learned counsel for the Applicant submitted that the Applicant has already paid the fine amount including the compensation amount. Learned counsel submitted that he is falsely implicated. In any case, the injuries were not grievous. The Applicant had not inflicted blows on the vital part. Therefore, offence u/s 307 of IPC is not made out. He submitted that in the absence of any grievous injury, the ingredients of

section 326 of the IPC are not made out. At the highest, the offence would be u/s 324 of the IPC. The Applicant is already in custody for more than 16 months out of sentence of 10 years.

5. Learned APP opposed these submissions. According to him, there was one injury on the head and the Applicant had given repeated blows. There is sufficient evidence against the Applicant. Therefore, bail should not be granted to him.

6. I have considered these submissions. The victim in this case is P.W.1 Ismail Ibrahim Sayyed. He has stated that on 25/05/2016, the Applicant stopped him. He was angry with P.W.1 because according to the Applicant, P.W.1 was instrumental in instigating the Applicant's wife to get divorced from the Applicant. The incident took place on 25/05/2016 at about 11.00 a.m. The Applicant inflicted injuries on his left leg and on the head by some weapon. He was taken to the civil hospital. Then his statement was recorded, which was treated as the FIR.

7. At this stage, it is not possible to disbelieve his version.

Therefore, it is necessary to see the nature of the injuries. As deposed by P.W.4 Dr. Khushal Malwade, the P.W.1 had suffered following injuries :

- (i) Incised wound 7.8 x 1.7 x 1.6 cm on right arm
- (ii) Incised wound 4.6 x 1.7 x 0.8 cm on left shoulder
- (iii) Incised wound 2.9 x 1.8 x 0.9 cm on left shoulder
- (iv) Incised wound 2.8 x 1.9 x 0.8 cm on left scapula region
- (v) Incised wound 9.5 x 3.2 x 3.1 cm on left leg
- (vi) Incised wound 3.7 x 1.8 x 1.0 cm on right parieto occipital region.

8. The Medical Officer has not stated that either of these injuries by themselves or cumulatively were endangering life. He has not described any particular injury as a grievous injury. The injury on the head did not cause any internal damage as per the CT Scan report. The medical certificate is produced at Ex.25.

9. Thus, it can be seen that out of six injuries, five injuries on the shoulder, arm and leg, were not on the vital parts like chest or abdomen. The injury on the head had not caused

internal damage. There is substance in the submissions made by learned counsel for the Applicant that the offence may not be the one u/s 307 of the IPC. The Applicant had sufficient time and opportunity to inflict blows on the vital organs and on chest and abdomen. But no such injuries were caused.

10. In this view of the matter, the Applicant is already in custody for about 16 months. There is possibility that a lesser offence is committed and therefore lesser sentence can be imposed on the Applicant. But this will have to be considered at the final hearing stage. The Appeal is not likely to be decided within a reasonable time. Hence the Applicant can be granted bail pending his Appeal. The Applicant was granted bail during trial. He has not misused his liberty.

11. Hence, the following order :

ORDER

- (i) During pendency and final disposal of the Criminal Appeal No.713 of 2023, the Applicant is directed to be released on bail on his

furnishing PR. Bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only), with one or two sureties in the like amount.

(ii) The application is disposed of.

(SARANG V. KOTWAL, J.)