

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3360 OF 2023

Raju @ Riyaz Gaus Shaikh ...Applicant
Versus
State of Maharashtra ...Respondent

Mr. Manoj Gadkari, a/w Kiran Jadhav, for the Applicant.
Mr. H. J. Dedhia, APP for the State – Respondent.

CORAM: N. J. JAMADAR, J.
DATED: 25th SEPTEMBER, 2024

ORDER:-

1. The Heard the learned Counsel for the parties.
2. The applicant, who is arraigned in Sessions Case No.158 of 2021 arising out of C. R. No.14 of 2021 registered at Mahatma Gandhi Chowk Police Station, Miraj, Sangli, for the offences punishable under Sections 302, 504 and 506 of the Indian Penal Code, 1860 ("the Penal Code"), has preferred this application to enlarge him on bail.
3. The indictment against the applicant is that on 11th January, 2021 Munir alias Munna Musa Shaikh (Mangalekar) (the deceased) had come to Hotel Sunshine Bar. The applicant followed him. They sat at table No.12. At about 7.45 p.m. there was huge commotion. Prakash Malkar, the first informant, and

the manager of the said hotel and other employees rushed to the said cabin. The applicant was seen giving blows by means of knife to the deceased. When the first informant and others tried to intervene, the applicant threatened them by pointing knife with which he was armed and took away the deceased also. Eventually, the deceased succumbed to the injuries.

4. In fact, this is the second application for bail. The first application was withdrawn on 7th July, 2022 with liberty to revive the prayer for bail in case the trial was not concluded before 31st May, 2023.

5. Mr. Gadkari, the learned Counsel for the applicant, submitted that there has been no progress in the trial though more than two years have elapsed since the withdrawal of the first application. The prosecution has cited as many as 60 witnesses and only three witnesses have till date been examined. It is extremely unlikely that the trial can be concluded within a reasonable period.

6. On the merits of the matter, Mr. Gadkari submitted that the witnesses have stated that they have seen the applicant armed with the knife. At the same time, there is material to indicate that another person rushed out of the said room amidst the commotion. At any rate, according to Mr. Gadkari, there is

no material to indicate that the applicant intended to cause the death of the deceased. The incident had occurred at the spur of moment. Therefore, the applicant deserves to be enlarged on bail.

7. Mr. Naik, the learned APP, resisted the prayer for bail. It was submitted that there are eye witnesses who have seen the applicant assaulting the deceased by means of knife. The applicant had made discovery leading to recovery of the knife by means of which the applicant assaulted the deceased. There is a very strong *prima facie* case against the applicant. Hence, the applicant does not deserve to be enlarged on bail.

8. I find substance in the submission of the learned APP. Sachin Pawar, the waiter, who was attending to the applicant and the deceased at table No.12, categorically stated that when he entered the cabin in which table No.12 was kept, alongwith the Manager and other staff, he found that the deceased was lying on the ground and the applicant was unleashing blows by means of knife. When Umesh Gauda tried to intervene, the applicant threatened them by pointing the knife and took away the deceased. The statement of the first informant *prima facie* lends support to the claim of Sachin Pawar.

9. In addition, the statement of Saddam Bagwan, the third person, who allegedly came out of the room after the quarrel broke out, *prima facie*, incriminates the applicant. Saddam has stated that the applicant caught hold of the deceased by his neck and gave three blows on the person of the deceased by means of knife. When Saddam tried to dissuade the applicant, the latter pointed the knife towards him and, thus, he fled away from the said cabin. *Prima facie* there is ample evidence to show that the applicant unleashed the deadly blows.

10. The submission on behalf of the applicant that the incident had occurred at the spur of the moment and there was no intent to cause death is *prima facie* belied by the multiple injuries noted by the Autopsy Surgeon. There were as many as nine stab injuries on the person of the deceased. It was not a case of one or two blows. Nine stab injuries unleashed in quick succession *prima facie* militate against the submission on behalf of the applicant that there was no intent to cause the death. Thus, on the merits of the matter, it appears that there is ocular account which finds support in the medical and circumstantial evidence.

11. It is true the applicant has been in custody since 12th January, 2021. The trial has commenced. Three witnesses

have been examined. The report of the learned Sessions Judge indicates that on a number of occasions the trial was adjourned at the instance of the accused. In these circumstances, having regard to the gravity of the offence, the nature of the evidence available on record and the severity of the punishment which the offence may entail, in my view, this is not a fit case to exercise the discretion.

12. However, as the applicant has been in custody since 12th January, 2021, it may be expedient in the interest of justice to issue directions to conclude the trial as expeditiously as possible.

13. Hence, the following order:

: O R D E R :

- (i) Application stands rejected.
- (ii) The learned Additional Sessions Judge, seized with Sessions Case No.158 of 2021 arising out of C. R. No.14 of 2021 registered at Mahatma Gandhi Chowk Police Station, Miraj, Sangli, is requested to make an endeavour to conclude the trial in Sessions Case No.158 of 2021 as expeditiously as possible.
- (iii) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the

purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and co-accused and the trial Court shall not be influenced by any of the observations made hereinabove.

Application disposed.

[N. J. JAMADAR, J.]