

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

BAIL APPLICATION NO.163 OF 2024

Irafan Khaja Shaikh

...Applicant

Versus

The State of Maharashtra

...Respondent

Ms. Sakshi Kadam a/w Mr. Pratik G. Tare i/b Mr. Kedar J. Patil, for the Applicant.

Ms. Veera Shinde, APP, for the Respondent-State.

CORAM: MADHAV J. JAMDAR, J.

DATED: 02nd MAY 2024

P. C.

1. Heard Ms. Kadam, learned Counsel for the Applicant and Ms. Shinde, learned APP for the Respondent-State.

2. This regular Bail Application is preferred under Section 439 of the *Code of Criminal Procedure, 1973*. The relevant details are as follows:

1	C.R. No.	62 of 2023
2	Date of registration of F.I.R.	16/03/2023
3	Name of Police Station	Uran, District-Raigad
4	Sections invoked	302, 109 r/w 34 of the <i>I.P.C., 1860</i> .
5	Date of incident	15/03/2023
6	Date of arrest	17/03/2023
7	Date of filing Charge-sheet	29/05/2023

3. As per the prosecution case, the deceased and the Applicant are acquainted with each other and they are residing in the same locality.

One Ms. Vaishnavi Mangundkar is also known to the Applicant as well as the deceased. The deceased-Deepak Chauhan used to treat Vaishnavi as his sister. On 13th March 2023, the Applicant asked Vaishnavi whether she had checked her Instagram account and whether she was interested to develop a friendship. Vaishnavi informed about this to Deceased as well as witness-Sandesh Santosh Auchare. Due to said behaviour of the Applicant, Deceased was infuriated. At about 03.00 p.m. on 15th March 2023, Deceased had a verbal spat over a conference call with the Applicant. Therefore, to sort out the said dispute, the Applicant was called by the deceased to the house of one Nihaal Khan i.e. a common friend of all these persons, where the witness-Sandesh Santosh Auchare was also present. When the Applicant was talking with Sandesh Santosh Auchare, the deceased-Deepak Chauhan questioned the Applicant as to why he was talking with his sister i.e. Vaishnavi and thereafter some altercation took place between the Applicant and the deceased-Deepak Chauhan. Both of them went outside the house and during the said altercation, the Applicant assaulted the deceased with fist blows and slammed the deceased against a wall. The deceased died during the said assault.

4. It is the contention of the learned Counsel for the Applicant that even if the entire case of the prosecution is accepted, then also no case is made out under Section 302 of the *Indian Penal Code, 1860* ("IPC").

She submitted that the Applicant is a young man aged 23 years. The incident in question took place suddenly without pre-planning. She submitted that there are no antecedents against the Applicant and therefore the Bail Application be granted.

5. On the other hand, Ms. Shinde, learned APP strongly opposed the Bail Application. She submitted that there are eye-witnesses to the incident. She pointed out the Post-Mortem Examination Report and submitted that the cause of death is recorded as “*Head Injury in an alleged case of Assault (unnatural)*”. She therefore submitted that the offence under Section 302 of IPC is made out and therefore the Bail Application be rejected. However, Ms. Shinde, on instructions, submitted that there are no antecedents against the Applicant.

6. Perusal of the record shows that the incident in question took place on 15th March 2023, F.I.R. was lodged on 15th March 2023 and the Applicant was arrested on 17th March 2023. It is an admitted position that investigation has been completed and Charge-sheet has been filed on 29th May 2023. As per the Charge-sheet, there are a total of 27 witnesses proposed to be examined by the prosecution. There is no progress in the trial and even the charge is also not framed. Accordingly, the trial is likely to take a considerably long time to conclude.

7. *Prima facie*, there is substance in the contention of learned Counsel for the Applicant that the incident in question took place on the

spur of the moment and no weapon was used by the Applicant to commit the offence in question. The only allegation is of assault by fist blows and at the most, the Applicant has slammed the deceased against a wall.

8. Ms. Kadam, learned Counsel for the Applicant states that as several witnesses are residing in the jurisdiction of Uran Police Station, District-Raigad, the Applicant will therefore reside at R/o.892/W/72, Mangir Devi Slum, Bhavara, Taluka-Uran, District-Raigad. She states that the said area is outside the jurisdiction of Uran Police Station.

9. The Applicant does not have any criminal antecedents.

10. The Applicant does not appear to be at risk of flight.

11. Accordingly, the Applicant can be enlarged on bail by imposing conditions.

12. In view thereof, the following order:

ORDER

- (a) The Applicant - Irafan Khaja Shaikh be released on bail in connection with C.R. No.62 of 2023 registered with the Uran Police Station, District-Raigad on his furnishing P.R. Bond of Rs.25,000/- with one or two local solvent sureties in the like amount.
- (b) The Applicant shall not enter the jurisdiction of Uran Police Station, District-Raigad after being released on bail, except for reporting to the Investigating Officer, if called, and for attending the trial.

- (c) On being released on bail, the Applicant shall furnish his cell phone number and residential address to the Investigating Officer and shall keep the same updated, in case of any change thereto.
- (d) The Applicant shall report to the Mora Sagari Police Station, District–Raigad once every week i.e. on every Sunday between 11.00 a.m. and 1.00 p.m. till the conclusion of the trial. The Police Inspector of Mora Sagari Police Station, District-Raigad to communicate details thereof to the Investigating Officer.
- (e) The Applicant shall not directly or indirectly make any inducement, threat, or promise to any person acquainted with the facts of the case so as to dissuade such a person from disclosing the facts to the Court or to any Police personnel.
- (f) The Applicant shall not tamper with the prosecution evidence and shall not contact or influence the Complainant or any witness in any manner.
- (g) The Applicant shall attend the trial regularly. The Applicant shall co-operate with the Trial Court and shall not seek unnecessary adjournments thereat.
- (h) The Applicant shall surrender his passport, if any, to the Investigating Officer.

13. The Bail Application is disposed of accordingly.

14. It is clarified that the Trial Court shall decide the case on its merits, uninfluenced by the *prima facie* observations made in this Order.

[MADHAV J. JAMDAR, J.]