

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 349 OF 2024

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Md. Nadeem Hafejul Rehman Malik ...Applicant  
**Versus**

The State of Maharashtra ...Respondent

**WITH**  
BAIL APPLICATION NO. 3091 OF 2023

Chhotu Liyakat Qureshi @ Chhotu Liyakat  
Ali Qureshi ...Applicant

**Versus**  
The State of Maharashtra ...Respondent

Mr. Tapan Thatte, a/w Mohammed Mulla and Zahir Mulla,  
for the Applicant.

Mrs. Geeta Mulekar, APP for the State/Respondent.

Ms. Trupti Khamkear, for the Complainant.

**CORAM: N. J. JAMADAR, J.**  
**DATED: 24<sup>th</sup> JANUARY, 2024**

**ORDER:-**

1. Heard the learned Counsel for the parties.
2. The applicants, who are arraigned in CR No.1400 of 2020, registered with Malvani Police Station, Mumbai, for the offences punishable under Sections 302, 307, 324, 323, 504, 506(2), 141, 143, 144, 145, 147, 148 and 149 of the Indian Penal Code, 1860 ("the Penal Code") and Sections 37(1)(A) and 135 of the Maharashtra Police Act, have preferred these applications to enlarge them on bail.

3. Sultan Shaikh, the first informant resides at Malvani Malad (West). Naseem Qureshi is his sister-in-law. Shahnawaj – accused No.1, Shahrukh – accused No.2, Chhotu – accused No.3, the applicant in BA/3091/2023 and Farida – accused No.6 and Jayada – accused No.7 are the children of Naseem. Nadeem, the applicant in BA/349/2024, is the husband of Jayeda. They reside in the same lane.

4. A crime was registered against accused No.1 Shahnawaj and the police had visited the house of the first informant in search of Shahrukh and the first informant had allegedly shown the CCTV footages, which were recorded in the mobile phone of the first informant's daughter. Farida – accused No.6 got enraged and questioned the first informant as to why he had shown the CCTV footages to the police despite being their relative.

5. On 19<sup>th</sup> October, 2020 at about 8.30 pm. accused No.1 Shahnawaj came to the house of the first informant and asked him to come out of the house for a discussion. The first informant told him to wait near Saibaba temple. After apprising his sons Najir (the deceased) and Jamal (the injured) the first informant went near the Saibaba temple. All the accused were present thereat.

6. Farida raked up quarrel with the first informant over showing the CCTV footages to the police. Applicant Nadeem caught hold of the first informant by the collar of his shirt. In the meanwhile, the deceased Najir came thereat and asked the accused to leave his father. Thereupon accused No.6 Farida alias Piya and accused No.7 Jayada caught hold of Najir. Jayada instigated accused No.1 Shahnawaj not to spare Najir. Accused No.1 Shahnawaj unleashed blows by means of knife on the chest and left underarm of the deceased. Jamal rushed to their rescue. Thereupon the applicant Chhotu, co-accused Ramjan and Shahrukh allegedly assaulted Jamal by means of fist and kick blows. As the first informant and injured raised alarm Faiju, Sahil and Rakesh Pande, their neighbours, came to their rescue. Shahrukh – accused No.2 assaulted Faiju by means of knife. Ramjan assaulted Rakesh Pande by means of knife. Sahil was allegedly assaulted by the applicant Chhotu by means of fist blows.

7. The applicants came to be arrested alongwith co-accused on 12<sup>th</sup> October, 2020.

8. Mr. Thatte, the learned Counsel for the applicants, submitted that no role of assault by means of any deadly

weapon has been attributed to the applicants. The applicants are in custody since October, 2020. In the circumstances, having regard to the role of the applicants, they deserve to be released on bail.

9. The learned APP resisted the prayer for bail. The learned APP submitted that the applicants were the members of the unlawful assembly and in prosecution of the common object of the unlawful assembly not only the deceased was killed but the witnesses, who had come to the rescue of the deceased and the first informant, were also assaulted by the accused by deadly weapons. Three members of the unlawful assembly namely; Shahnawaj, Shahrukh and Ramjan were armed with knives. All the accused had assembled at the spot having made preparation to cause death and grievous injuries. Therefore, the applicants do not deserve relief of bail.

10. Ms. Khamkar, the learned Counsel for the first informant in BA/3091/2023, also resisted the application. It was submitted that at this stage there is no reason to make any distinction between the role of the applicants since the offences have been committed in prosecution of the common object of the unlawful assembly and the material on record

indicates that the applicants were members of the unlawful assembly. In case the applicants are released on bail, there is a strong possibility of tampering with evidence and threatening the witnesses, submitted Mr. Khamkar.

11. I have given careful consideration to the rival submissions. I have also perused the report under Section 173 and the documents annexed with it. *Prima facie*, there is material to show the presence of the applicants at the scene of occurrence and that they were the members of the unlawful assembly. The sequence of events, however, is required to be considered albeit *prima facie*.

12. Accused No.1 Shahnawaj had called the first informant for discussion. The first informant asked accused No.1 to wait near Saibaba temple. When the first informant reached the said spot, an altercation ensued. The role attributed to the applicant Nadeem is that of catching hold of the first informant. *Prima facie*, it does not appear that, at that stage, the first informant was assaulted by any of the accused. When the deceased came at the scene of occurrence, co-accused Farida and Jayada caught hold of the deceased and exhorted Shahnawaj not to spare the deceased. Thereupon, Shahnawaj unleashed the blows by means of knife. When

the witnesses came to their rescue, the applicant Chhotu allegedly assaulted Jamal and the first informant by fist blows and also Sahil by fist blows.

13. In the backdrop of the aforesaid sequence of events, at this stage, the question as to whether applicants Nadeem and Chhotu shared the common object to kill the deceased and attempt to commit murder of the injured or knew that those offences were likely to be committed in prosecution of the common object of the unlawful assembly, would be a matter for adjudication at the trial. *Prima facie* it does not appear that the role of either catching hold of the deceased or the persons, who were assaulted by means of deadly weapons, has been attributed to either of the applicants.

14. Undoubtedly, there is material to show the presence of the applicants at the scene of occurrence and also the fact that they were the members of the unlawful assembly. However, the role attributed to the applicants in the alleged occurrence when they are implicated by invoking the principle of constructive criminality under Section 149 of the Penal Code deserves to be taken into account while considering their entitlement for bail. As the role of catching hold of the first informant after the initial altercation before

the assault was perpetrated is attributed to Nadeem and the role of assaulting Jamal, the first informant and Sahil by fist blows only, when the fight broke out, has been attributed to the applicant Chhotu, I am inclined to exercise the discretion in favour of the applicants.

15. The applicants are in custody for more than three years. It is unlikely that the trial can be concluded in reasonable period. The applicants appear to have roots in society. The apprehension on the part of the prosecution and the first informant can be taken care of by imposing conditions.

16. Hence the following order:

**: O R D E R :**

- (i) Applications stand allowed.
- (ii) Md. Nadeem Hafejul Rehman Malik, applicant in BA/349/2024 and Chhotu Liyakat Qureshi @ Chhotu Liyakat Ali Qureshi, applicant in BA/3091/2023 be released on bail in CR No.1400 of 2020, registered with Malvani Police Station, Mumbai, on furnishing a P.R. Bond of Rs. 30,000/-, each, with one or more sureties in the like amount to the satisfaction of the trial court.
- (iii) The applicants shall mark their presence at the Malvani

police station on the first Monday of every month in between 10.00 am. to 12.00 noon till the conclusion of the trial.

(iv) The applicants shall stay away from the local limits of Malvani Police Station for a period of two years or till the conclusion of trial, except for the purpose of attending Malvani Police Station.

(v) The applicants shall not tamper with the prosecution evidence. The applicants 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 him from disclosing the facts to Court or any police officer.

(vi) On being released on bail, the applicants shall furnish their contact numbers and residential address to the investigating officer and shall keep him updated, in case there is any change.

(vii) The applicants shall regularly attend the proceedings before the jurisdictional Court.

(viii) 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 the trial Court shall not be

influenced by any of the observations made hereinabove.

Applications stand disposed.

[N. J. JAMADAR, J.]