

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 581 OF 2024

SANTOSH
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Date: 2024.02.12
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Farhan Irfan Shaikh alias Fodi

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Hasan Sayed, i/b R. A. Shaikh, for the Applicant.

Mr. S. R. Aagarkar, APP for the State/Respondent.

Mr. PSI Vilas Surve, Deonar Police Station, present.

CORAM: N. J. JAMADAR, J.

DATED: 9th FEBRUARY, 2024

ORDER:-

1. Heard the learned Counsel for the parties.
2. This is an application for bail in connection with CR No.771 of 2023 registered with Deonar Police Station, Mumbai, for the offences punishable under Sections 307, 326, 323, 504 and 506(2) read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code"), Section 37(1)(a) read with Section 135 of the Maharashtra Police Act, 1951 and Sections 4, 25 and 27 of the Arms Act, 1959.
3. The first informant and the accused are residents of the same locality. Accused No.1 Shabab Salmani alias Sonu is alleged to have created a reign of terror in Gowandi area. The

applicant Farhan Shaikh and co-accused Aadesh Kamble are allegedly the associates of accused No.1 Shabab.

4. On 14th July, 2023, the first informant had joined the applicant and co-accused while they were having drinks. An altercation ensued over a previous quarrel between the first informant and accused No.1 Shabab. When the first informant tried to reason with the applicant, co-accused Shabab assaulted him by means of knife. The applicant allegedly assaulted the first informant by means of a scythe, on the head of the first informant. Co-accused Aadesh also gave blows on the head of the first informant by taking over the knife from the co-accused Shabab.

5. The learned Counsel for the applicant submitted that the applicant has been falsely roped in. No external injury was noted on the head of the first informant during the course of a medical examination. The role of assault by means of knife on the face of the first informant has been attributed to co-accused Shabab. Therefore, the applicant deserves to be released on bail.

6. The learned APP countered the submissions on behalf of the applicant. It was urged that the applicant had sustained head injuries. The radiological examination reveals

that there was trauma to head. Attention of the Court was invited to the Medico-Legal Examination papers (pages 71 to 85).

7. I have perused allegations in the FIR and the injury certificate. The applicant and co-accused had allegedly assaulted the first informant by means of scythe and knife respectively. The Medical Officer, who examined the first informant at LTMG Hospital, Sion, Mumbai, had not noted any injury on the head of the first informant. Three injuries were noted on the face of the first informant. All the injuries were simple and appeared to have been caused by a blunt object. Evidently, the first informant had not sustained any injury by means of a sharp object on the head.

8. *Prima facie*, the allegation of assault by means of scythe on the head of the first informant does not find support in the Medico-Legal papers. Moreover, it is alleged that three persons had assaulted the first informant by means of sharp weapons. In that event, there would have been marks of injuries on the person of the first informant by means of sharp weapons.

9. In the aforesaid view of the matter, a *prima facie* case is made out to exercise the discretion in favour of the applicant.

10. The learned APP submitted that there are antecedents of the applicant, which disentitle him the relief of bail. In all, three crimes seem to have been registered against the applicant. However, having regard to the nature of the material pressed into service in this case, the applicant cannot be deprived of his personal liberty on account of the antecedents. The apprehension on the part of the prosecution can be taken care of by imposing conditions.

11. Hence the following order:

: O R D E R :

- (i) The application stands allowed.
- (ii) The applicant be released on bail in CR No.771 of 2023 registered with Deonar Police Station, Mumbai, on furnishing a P.R. Bond of Rs.30,000/- with one or more sureties in the like amount.
- (iii) The applicant shall mark his presence at Deonar Police Station on the first Monday of every alternate month between 10.00 am. to 12.00 noon for a period of two years or till the conclusion of the trial, whichever is earlier.
- (iv) The applicant shall not tamper with the prosecution evidence. 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 him from disclosing the facts to Court or any police officer.

(v) The applicant shall stay away from the limits of Deonar, Govandi and Shivaji Nagar Police Station for a period of two years or till the conclusion of the trial, whichever is earlier.

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

(vii) The applicant 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 co-accused and the trial Court shall not be influenced by any of the observations made hereinabove.

Application disposed.

[N. J. JAMADAR, J.]