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

BAIL APPLICATION NO.705 OF 2024

IRFAN ISMAIL SAYYED

..APPLICANT

VS.

THE STATE OF MAHARASHTRA

..RESPONDENT

Adv. Aniket Vagal a/w Adv. Divesh Mehani a/w Adv. Savvy
Kolhekar a/w Adv. Kunal N. Pednekar for the applicant.
Ms. Megha S. Bajoria, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : FEBRUARY 29, 2024

P.C. :

1. Heard learned counsel for the applicant and learned
APP for the State.

2. This is an application for bail in respect of the offence
punishable under Sections 302, 120-B, 307, 324, 323, 452,
143, 147, 148, 149, 504, 506, 427 read with 34 of the
Indian Penal Code (hereafter 'IPC' for short), under Section
7A of the Criminal Law Amendment Act and under Sections
4, 25 of the Arms Act registered on 26.09.2018 vide C.R.
No.172 of 2018 with Manmad City Police Station, District
Nashik.

3. In respect of the co-accused – Imran Ismail Sayyed this Court in Bail Application No.3896 of 2023 has granted bail. The relevant portion of the order dated 01.02.2024 reads thus :-

"2. This is a second application for bail filed by the applicant. The first bail application was withdrawn by the applicant by the order dated 21.09.2023 with liberty to file an application after six months if the trial does not progress substantially. There are in all 36 accused. The applicant is the accused No.4. The applicant is seeking bail in connection with C.R. No.172 of 2018 registered with Manmad Police Station, District Nashik for offences punishable under Sections 302, 120(B), 307, 324, 323, 452, 143, 147, 148, 149, 504, 506, 427 read with 34 of the Indian Penal Code, 1860 and under Section 7-A of Criminal Law Amendment Act, 1995 and under Section 4(25) of Arms Act.

3. The case of the prosecution in brief is that on 25.09.2018 one Iliyas Sayyed and others hatched conspiracy and called the applicant and other accused at Ekta Nagar. The accused armed with weapons such as sticks, chopper, rod, iron pipes and sword, created terror at Ekta Nagar, caused damage to the vehicles and assaulted complainant's husband. He died during medical treatment. The FIR was lodged on 26.09.2018. On completing investigation, charge-sheet is filed.

4. The applicant was arrested on 02.10.2018 and is now in custody for more than five years and three months. The trial Court has framed the charges after this Court had directed that the charges being framed in a time bound manner. There is a recovery of a sword and chopper at the instance of the present applicant. The statement of the eye witness reveals that the mob of around 36 persons assaulted the victim. The victim suffered as many as 14 injuries. The assault was brutal. Prima facie I find that there is no specific role attributed to the present applicant but then generally the case that the accused assaulted the victim with deadly weapons as even the applicant was

armed with a deadly weapon. There is recovery of a sword and chopper at his instance. There is another co-accused from whom the sword has been recovered.

5. This Court by an order dated 22.06.2023 in respect of the co-accused – Nadim Salim Shaikh while rejecting his bail application observed that in the event the trial is not concluded within a period of six months from 22.06.2023, the applicant – co-accused will be at a liberty to prefer fresh application for bail before this Court. As indicated earlier and even thereafter this Court by an order dated 21.09.2023 while allowing the applicant to withdraw the bail application granted liberty to file an application after six months if the trial does not progress substantially, in this period there has been no progress in the trial. There are 66 witnesses the prosecution intends to examine. In view of the length of the incarceration coupled with the fact that the trial is unlikely to conclude any time soon and in the facts and circumstances of the present case I am inclined to enlarge the applicant on bail.

6. There are criminal antecedents reported against the applicant. Though I am not inclined to deprive the facility of bail to the applicant only on the ground of criminal antecedents, however I propose to impose stringent conditions while enlarging the applicant on bail taking an overall view of the matter.”

4. The application is opposed by learned APP. It is submitted that there are five criminal antecedents bearing C.R. No.129 of 2010 under Sections 143, 147, 403, 323, 504, 506 of the IPC; C.R. No.23 of 2014 under Sections 143, 147, 148, 149, 324, 323, 504, 506 of the IPC; C.R. No.20 of 2017 under Sections 143, 147, 148, 149, 324, 323, 504, 506 of the IPC; C.R. No.117 of 2018 under Sections 326, 324, 323, 143, 147, 148, 149, 506 of the IPC

and under Section 135 of the Maharashtra Police Act and C.R. No.159 of 2017 under Sections 452, 324, 323, 504, 506, 427, 34 of the IPC reported against the applicant. The applicant is the accused No.5. The applicant was arrested on 05.10.2018. The antecedents itself should not deprive the applicant the facility of bail considering that the applicant is in custody for more than five years and six months with no possibility of the trial concluding any time soon. There is no recovery from the applicant. On the ground of parity with the co-accused – Imran Ismail Sayyed and considering that the applicant is in custody for more than five years and six months, for the same reasons as in the order dated 01.02.2024, I am inclined to enlarge the applicant on bail. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant-Irfan Ismail Sayyed in connection in connection with C.R. No.172 of 2018 registered with Manmad City Police Station shall be released on bail on their furnishing P.R. Bond of Rs.50,000/- with one or more sureties in the like amount.

(c) The applicant shall attend the Investigating Officer of Manmad City Police Station once in a month every first Thursday of the month between 11.00 a.m. and 1.00 p.m.

(d) 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. The applicant shall not tamper with evidence.

(e) 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.

(f) Except for attending the trial and for the purpose of reporting to the Investigating Officer, the applicant shall not enter the area of Nashik District after being released on bail, till the trial concludes.

(g) The applicant shall attend the trial regularly. The applicant shall co-operate with the trial Court and shall not seek unnecessary adjournments.

5. The application is disposed of.

(M. S. KARNIK, J.)