



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.719 OF 2023**

Arbaaz Afsal Khan

... Applicant

versus

The Sr. Inspector of Police and Anr.

... Respondents

Mr. Abdul Rab Shaikh with Mr. Qurban Kudle, Mr. Mujahid Banani, for Applicant.

Ms. Gauri Rao, APP for State.

PSI A.S.Jadhav, Ghatkopar Police Station present.

CORAM: N.J.JAMADAR, J.

DATE : 27 MARCH 2024

P.C.

1. Heard the learned Counsel for the parties.
2. The applicant who is arraigned in C.R.No.864 of 2021 registered with Ghatkopar Police Station for the offences punishable under Sections 307, 506(2) and 504 of the Indian Penal Code has preferred this application to enlarge him on bail.
3. The first informant is the maternal uncle of the applicant. They are next door neighbours. On 3 December 2021 at about 3.00 p.m., while the first informant was taking rest in his home, loud noise emanated from the room of the applicant as he had called his friends. The first informant scolded the applicant and his friends. Thereupon, the friends of the applicant left the house of the applicant. Thus, the applicant was enraged. While hurling abuses, the applicant assaulted the first informant by means of a kitchen knife. First blow was given on the neck on the first informant. While trying to fend off the second blow, the first informant sustained

injuries on the left hand. The applicant came to be arrested on 3 December 2021.

4. Learned Counsel for the Applicant submitted that there is a discrepancy in the time of the occurrence as mentioned in the FIR and the history narrated before the Medical Officer. It was further submitted that the injury certificate of the first informant indicates that the first informant was under the influence of alcohol. As there is a dispute between the first informant and the mother of the applicant over the proprietary title to the room, the applicant has been falsely roped in by giving exaggerated account of the alleged occurrence, submitted learned counsel for the Applicant.

5. Learned APP resisted the prayer for bail. Attention of the Court was invited to the statement of the brother of the applicant which prima facie lends support to the claim of the first informant. It was further submitted that the applicant has antecedents and since the applicant and the first informant are the next door neighbours, if the applicant is released on bail, there is a strong possibility of tampering with evidence and threatening the witnesses. Thus, the applicant does not deserve to be enlarged on bail.

6. I have perused the report under Section 173 of the Code and the document annexed with it. Prima facie, there is material to show that the applicant had assaulted the first informant. However, the entirety of the occurrence deserves to be taken into account. It appears that an altercation had ensued. The first informant

was also under the influence of liquor. It seems, during the course of altercation, in the spur of the moment, the applicant had allegedly assaulted the first informant by means of a kitchen knife. Injury certificate indicates that the Medical Officer had designated both the injuries as simple.

7. It is true, the injury found on the neck can be said to be on the vital part of the body. However, having regard to the entire setting of the matter, especially the prelude to the occurrence, and the relationship between the parties, whether the applicant intended to cause death of the first informant would be a matter for adjudication at the trial.

8. The applicant has been in custody since 3 December 2021. The applicant was 19 year of age at the time of the alleged occurrence. It is unlikely that the trial can be concluded within a reasonable period of time. The apprehension on the part of the prosecution can be taken care of by imposing appropriate conditions. I am, therefore, inclined to release the applicant on bail.

9. Hence, the following order :

ORDER

(i) The Application stands allowed.

(ii) The Applicant – Arbaaz Afzal Khan be released on bail in C.R.No.864 of 2021 registered with Ghatkopar Police station on furnishing a PR bond in the sum of Rs.30,000/- and one or two sureties in the like amount to the satisfaction of the trial Court.

(iii) The applicant shall not enter the limits of Ghatkopar Police Station for a period of three years or till the conclusion of the trial, whichever is earlier, except for marking his presence before the said Police Station on first Monday of every alternate month between 11 am to 1 pm for a period of three 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) 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.

(vi) The applicant shall regularly attend the proceedings before the jurisdictional Court.

(vii) 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.

(N.J.JAMADAR, J.)

SSP

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