



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

**INTERIM APPLICATION NO. 4760 OF 2023
IN
CRIMINAL APPEAL NO. 344 OF 2017**

ABDUL KADIR GULAB NABI SHAIKH ..APPLICANT
VS.
THE STATE OF MAHARASHTRA ..RESPONDENT

**WITH
INTERIM APPLICATION NO. 1404 OF 2024
IN
CRIMINAL APPEAL NO. 344 OF 2017**

MOHAMMAD SAHEB GAUS GULAM
NABI SHAIKH ..APPLICANT
VS.
THE STATE OF MAHARASHTRA ..RESPONDENT

Adv. Amit Icham for the Applicants.
Ms. Kranti Hiwrale, APP for the State.

**CORAM : M. S. KARNIK &
KAMAL KHATA, JJ.**

DATE : MAY 09, 2024

P.C.:

1. Heard learned counsel for the applicants and learned APP for the State.
2. These are applications filed by the applicants through jail for suspension of the sentence imposed by the trial

Court and for bail during the pendency of the appeal.

3. By order dated 03rd May 2017 in Criminal Application No. 421 of 2017, this Court had rejected the bail to the present applicants. The said order reads thus:

"1. Heard both sides.

2. The applicants who are the original accused Nos. 1 to 3 have been mainly convicted under Section 302 r/w Section 34 of IPC.

3. The applicants are now seeking bail. It is the prosecution case that on 21st July, 2012 at about 12.30 p.m the applicants assaulted Tarique Ahmed Kureshi and caused his death. There are two eye witnesses to the incident. On going through the evidence it shows that the present applicants assaulted Tarique due to which Tarique died. P.W. 5 who is an eye witness has stated that the accused No.2 Kadir was holding a sword, accused No.3 Nabi was holding iron pipe and accused No.1 Mohammed was holding sword. They assaulted Tarique with iron pipe and sword. Thereafter applicant No.1 had fired a shot from gun on the chest of Tarique. The Postmortem notes show that Tarique has sustained fire arm injury in addition he has sustained nine other injuries which are consistent with assault by sword and iron rod.

4. Learned Counsel for the applicants submitted that the complainant who is P.W. No.1 has not stated about the presence of P.W. 5 Hasan at the spot. However, the evidence of the informant shows that he was not present at the time of the incident and he came later-on at the spot. In any event an FIR is not an encyclopedia and basic facts have to be stated therein as known to the complainant. It is not expected that each detail has to be given in th FIR, hence, we are not inclined to give much importance to this aspect. Thereafter the learned Counsel for the applicants submitted that P.W. 4 Mustaq and P.W. 5 Hasan are interested witnesses hence, their

testimony cannot be relied upon. He also submitted that there were inimical relations between the deceased and the applicants and on account of this the applicants have been falsely implicated. However, it is seen that both these witnesses have not been shaken in their cross examination. Prima facie we find their testimony reliable.

5. Thereafter it was submitted that some persons took the deceased to the hospital, however, their blood stained clothes were not seized by the Investigating Agency. It is submitted that there were other persons present at the spot but their statements were not recorded and only statements of interested witnesses were recorded. Both these cannot be the circumstances on which bail can be granted.

6. Looking to the evidence on record and the role played by the applicants we are not inclined to grant bail. Application for bail is rejected.”

4. The applicants were arrested on 22nd July 2012. The applicants are now in custody for almost 11 years and 9 months. The appeal is not likely to be heard any time soon. Considering the long incarceration of the applicants, we are inclined to enlarge the applicants on bail.

5. During the pendency and final disposal of Criminal Appeal No. 344 of 2017, the applicants are directed to be released on bail on their executing P.R. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand) each with one or more sureties each in the like amount.

6. The applicants to cooperate with early disposal of the

appeal during its final hearing stage.

7. The interim applications are disposed of.

(KAMAL KHATA, J.)

(M. S. KARNIK, J.)