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

BAIL APPLICATION NO.1451 OF 2024

KAILAS SURESH SHIRSAT

..APPLICANT

VS.

THE STATE OF MAHARASHTRA

..RESPONDENT

Adv. Amod Ekaspur i/b. Adv. Kaushik Mhatre for the
applicant.

Smt. Sangeeta D. Shinde, APP for the State.

PSI-S. M. Kondewad, Virar Police Station.

CORAM : M. S. KARNIK, J.

DATE : APRIL 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 read with 34 of the Indian
Penal Code (hereafter 'IPC' for short) registered on
06.09.2021 vide C.R. No.I-775 of 2021 with Virar Police
Station.

3. There are in all fourteen accused. The applicant is the
accused No.10. The applicant was arrested on 08.09.2021.

4. By an order dated 06.03.2024 in Bail Application No.3598 of 2023 and other connected Bail Applications, co-accused therein were enlarged on bail. The relevant portion of the order dated 06.03.2024 reads thus :-

"2. These are the applications for bail in respect of the offence punishable under Sections 302 read with 34 of the Indian Penal Code registered on 06/09/2021 vide C.R. No.775 of 2021 with Virar Police Station.

3. The applicants - Chandrabhan, Roshan and Ajay are accused Nos. 1, 7 and 9 respectively. It is the case of the prosecution that the deceased- Nishant Kadam was brutally murdered on 06/09/2021 at around 3.20 a.m. Around 14 to 15 accused assaulted the deceased. From the materials, it appears that the applicants were present at the scene of the alleged offence. So far as the applicants- Ajay and Roshan are concerned, no role has been attributed to them. So far as the applicant- Chandrabhan is concerned, it was alleged that he assaulted the deceased with fists and kick blows. Whether the applicant - Chandrabhan shared common intention with the other assailants is a question to be decided at the time of trial. The applicant- Chandrabhan was arrested on 07/09/2021 and the other applicants- Roshan and Ajay were arrested on 08/09/2021. The applicants are in custody for more than two years and five months as undertrials. There are no criminal antecedents reported so far as the applicants- Ajay and Chandrabhan are concerned. Learned counsel for the applicants submits that there is one criminal antecedent reported against the applicant- Roshan in respect of bike theft. Such criminal antecedent need not be a factor to deprive the applicant- Roshan the facility of bail.

4. In my opinion, considering the role of the applicants in the alleged offence and the fact that they have been in pre-trial custody for more than two years and five months with no possibility of trial concluding any time soon, the applicants can be enlarged on bail. The investigation is complete and the charge-sheet is filed."

5. The application is vehemently opposed by learned APP. Learned APP submitted that the CDR details show that

the applicant was in touch with the other co-accused. It is further submitted that for the offence punishable under Section 307 of the IPC the applicant was convicted by the trial Court.

6. To allay the apprehension of learned APP that the applicant is likely to indulge in the similar offence and tampering with the witnesses and also considering that the applicant was convicted for the offence punishable under Section 307 of the IPC, stringent conditions can be imposed on the applicant. So far as the present applicant is concerned, he was arrested on 08.09.2021. The applicant is now in custody for more than two years and seven months. The applicant is not named in the FIR. There is recovery of clothes which are not blood stained at the instance of the applicant. There is a recovery of the mobile phone at the instance of the applicant. The applicant has however not been identified. There is no recovery from the applicant of any weapon. The role of the actual assailants has been described in the statement of the eyewitness. The investigation is complete. The charge-sheet has been filed.

Considering the nature of the materials against the applicant I am inclined to enlarge the applicant on bail but by imposing stringent conditions. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant-Kailas Suresh Shirsat in connection with C.R. No.I-775 of 2021 registered with Virar Police Station shall be released on bail on his furnishing P.R. Bond of Rs.15,000/- with one or more sureties in the like amount.
- (c) The applicant shall report to the nearest police station close to his residence while staying outside Mumbai/Mumbai Suburban District, Vasai, Virar and Thane districts, once in a fortnight, on 1st and 3rd Sunday of every month, between 11:00 a.m. and 1:00 p.m. till the trial concludes.
- (d) The applicant shall furnish the contact details and address of the police station he will be reported to the trial Court as well as the Investigating Officer.
- (e) 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.

(f) 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.

(g) Except for attending the trial, the applicant shall not enter the aforesaid districts after being released on bail, till the trial concludes.

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

7. The bail application is disposed of.

(M. S. KARNIK, J.)