

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1655 OF 2023

Salman Gulam Hussain Khan ...Applicant

vs.

The State of Maharashtra ...Respondent

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SUBHASH
PAREKAR

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Mr. Raviraj Paramane, for the Applicant.

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

Mr. L.S. Hasure, PSI, Koparkhairane police station.

CORAM : N. J. JAMADAR, J.

DATE : JANUARY 05, 2024

P.C.:

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

2. The applicant who is arraigned in C.R. No. 479 of 2022 registered with Koparkhairane police station for the offences punishable under sections 302, 326, 504 and 506 read with 34 of Indian Penal Code, 1860 has preferred this application for release on bail.

3. On 12th November, 2022 in the morning there was an altercation between the informant party and the accused party over assaulting a member of the informant party namely Nitin @ Bunty. The first informant Sabir Shah alleged that in the evening at about 7 pm the informant party learnt that accused No. 1 Ruhan Shaikh and his friends were near Ghansoli Darga. The informant

party went in search of the members of the accused party armed with sticks and baseball bat. The members of the informant party entered into the lane and assaulted the members of the accused party by means of sticks and baseball bat. It is alleged that accused Ruhan Shaikh gave a blow by means of a sharp weapon on the chest of Nasir Shaikh (the deceased). Thereupon the deceased was taken to hospital. Other members of the informant party were also taken to the hospital. Eventually, Nasir Shaikh succumbed to the injuries. The first informant further alleged that the applicant and Mohd. Kaif, who were the members of the accused party, had also sustained injuries in the said occurrence.

4. The learned counsel for the applicant submitted that no role of assault of whatsoever nature has been attributed to the applicant. In fact the informant party was the aggressor and had came to the scene of occurrence armed with weapons and assaulted the members of the accused party. The first informant as well as the witnesses have attributed the role of assault by means of sharp weapon to the co-accused Ruhan Shaikh. In respect of the very same occurrence, the accused party had lodged FIR leading to registration of C.R. No.480 of 2022 for offences punishable under sections 141, 143, 147, 149 and 307 of Indian Penal Code, 1860 and section 37(1) read with 135 of Maharashtra Police Act, 1951.

5. The learned APP resisted the prayer for bail.

6. From the perusal of the first information report, it becomes prima facie evident that the informant party had gone in search of the members of the accused party armed with sticks and baseball bat. Prima facie, the informant party was the aggressor. In any event, the role of assault by means of sharp weapon is attributed to the co-accused Ruhan Shaikh. There is substance in the submission of the learned counsel for the applicant that no role of assault to any of the members of the informant party had been attributed to the applicant. In contrast, the first informant as well as the injured witnesses have stated that in the fight, which had ensued the applicant had sustained injuries leading to registration of the first C.R.No. 480 of 2022. In the circumstances, whether the applicant can be roped in by invoking the principle of constructive criminality under section 34 of the Penal Code would be a matter for adjudication at the trial. Hence, a prima facie case for exercise of discretion is made out.

Hence, the following order.

ORDER

1] The application is allowed.

2] The applicant Salman Gulam Hussain Khan be released on bail in

C.R. No. 479 of 2022 registered with Koparkhairane police station, on furnishing a P.R. Bond of Rs. 30,000/- with one or more sureties in the like amount.

3] The applicant shall mark his presence at Koparkhairane police station on the first Monday of every alternate month in between 11 am to 1 pm till conclusion of the trial.

4] The applicant shall not enter the limits of Koparkhairane police station except for the purpose of attending police station for a period of two years or till the conclusion of the trial whichever is earlier.

5] The applicant shall not tamper with the prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses or any person acquainted with the facts of the case.

6] 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.

7] The applicant shall regularly attend the proceedings before the jurisdictional Court.

8] 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.

Application disposed.

(N. J. JAMADAR, J.)