

BHALCHANDRA
GOPAL DUSANE

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

CRIMINAL BAIL APPLICATION NO. 2059 OF 2023

Arif Khan Asif Khan

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Aniket Vagal a/w Divesh Mehani, Kunal Pednekar and Savvy Kolhekar, Advocates, for the Applicant.

Mr. Sameer M. Mangaonkar, APP for Respondent- State.

PSI, Vidhate, Azadnagar Police Station, Malegaon, District Nashik

CORAM : MADHAV J. JAMDAR, J.

DATED : 15th March 2024

P. C.

1. Heard Mr. Vagal, learned Counsel for the Applicant and Mr. Mangaonkar, learned APP for the Respondent-State.

2. This regular Bail Application is preferred under Section 439 of the *Code of Criminal Procedure, 1973*. The relevant details are as follows:-

1.	C.R. No.	163 of 2022
2.	Date of registration of F.I.R.	26th November 2022
3.	Name of Police Station	Azadnagar, Malegaon, District-Nashik
4.	Section/s invoked	302 of <i>I.P.C., 1860</i>
5.	Date of incident	26th November 2022
6.	Date of arrest	26th November 2022
7.	Date of filing Charge-sheet	22nd February 2023

3. The prosecution case is that the deceased is a near relative of the Applicant. As per the prosecution case, the incident in question took

place as the deceased was demanding a cell phone from the Applicant and the Applicant was refusing to give the said cell phone and therefore some scuffle took place between them. The informant who is the uncle of the deceased and other relatives, tried to intervene. However the Applicant and the deceased were not listening to them and in the said scuffle, the Applicant assaulted the deceased with a knife. As per the prosecution case, as soon as the Applicant noticed that the deceased was seriously injured, the Applicant, Informant and other relatives took the deceased to the hospital and as one of the hospital refused to admit the deceased, they went to another hospital and the deceased succumbed to the resultant injuries.

4. Mr. Vagal, learned Counsel for the Applicant submitted that the incident in question took place on the spur of the moment. The Applicant is in custody since more than 1 year and 5 months. He submitted that the deceased went to the Applicant's house and thereafter the quarrel started between them. He submitted that in any case, there was no pre-planning and therefore the Applicant is entitled to be released on bail. He submitted that in fact the Applicant took the deceased to the hospital. He submitted that there are no criminal antecedents.

5. On the other hand, learned APP vehemently opposed the Bail Application and stated that there are eye-witnesses to the incident. The

Knife which was used in the offence has been recovered at the instance of the present Applicant and therefore the Bail Application be rejected. After taking instructions, the learned A.P.P. states that there are no criminal antecedents.

6. Perusal of the record shows that the incident occurred on 26th November 2022, the Applicant was arrested on 26th November 2022 and the Charge-sheet was filed on 22nd February 2023. As per the Charge-sheet, prosecution proposes to examine 13 witnesses. Till date even the Charge is also not framed yet. The Applicant is in custody for more than 1 year and 5 months.

7. *Prima facie*, there is substance in the contention of learned Counsel for the Applicant that the incident in question has taken place on the spur of the moment and there are no criminal antecedents. The trial is likely to take a considerably long time.

8. The Applicant does not appear to be at risk of flight.

9. The Applicant does not have any criminal antecedents.

10. Accordingly, the Applicant can be enlarged on bail by imposing conditions.

11. In view thereof, the following order:-

ORDER

(a) The Applicant - Arif Khan Asif Khan be released on bail in connection with C. R. No.163 of 2022 registered with

the Azadnagar Police Station, Malegaon, District-Nashik on his furnishing P. R. Bond of Rs.20,000/- with one or two local solvent sureties in the like amount.

(b) On being released on bail, the Applicant shall furnish his cell phone number and residential address to the Investigating Officer and shall keep the same updated, in case of any change thereto.

(c) The Applicant shall report to the Azad Nagar Police Station, Malegaon, District-Nashik once every week, on every Sunday between 11.00 a.m. and 1.00 p.m. until the conclusion of the trial.

(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 such a person from disclosing the facts to the Court or to any Police personnel.

(e) The Applicant shall not tamper with the prosecution evidence and shall not contact or influence the Complainant or any prosecution witness in any manner.

(f) The Applicant shall attend the trial regularly. The Applicant shall co-operate with the Trial Court and shall not seek unnecessary adjournments thereat.

(g) The Applicant shall surrender his passport, if any, to the Investigating Officer.

12. The Bail Application is disposed of accordingly.

13. It is clarified that the observations made herein are *prima facie*, and the Trial Court shall decide the case on its merits, uninfluenced by the observations made in this Order.

[MADHAV J. JAMDAR, J.]