

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2112 OF 2023

Shanawaz Rushidhhin Khan @ Shanu	vs.	...Applicant
The State of Maharashtra		...Respondent

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Mr. Meghdeep Oak (through VC) a/w. Mr. Diptendu Bose and Mr. Puneet Fonia, for the Applicant.
Mrs. Geeta Mulekar, APP, for the Respondent/State.
Ms. Rachana Gurule, API, Wagle Estate police station.

CORAM : N. J. JAMADAR, J.
DATE : JANUARY 02, 2024

P.C.:

1. Heard the learned counsel for the applicant and the learned APP for the State.
2. The applicant along with the co-accused has been arraigned for the offences punishable under sections 302, 142, 143, 145 of Indian Penal Code, 1860 and sections 37(3) read with 135 of Maharashtra Police Act, 1951 in C.R. No. 146 of 2021 registered with Wagle Estate police station, Thane.
3. The deceased had allegedly molested a minor daughter of co-accused Atik Khan. The applicant and the co-accused allegedly accosted the deceased and belabored him. The deceased was thereafter taken to police station and noticing the injuries which were found on the person of the deceased, he was shifted to Chatrapati Shivaji Maharaj Hospital, Kalwa where the deceased

was declared dead.

4. The learned counsel for the applicant submitted that the co-accused Atik Khan, who was allegedly armed with a stick, and, in a sense, the principal accused, has been granted bail. Attention of the Court was invited to the orders passed by this Court in BA No. 192 of 2023 and BA No. 2764 of 2023 whereby the co-accused Aman Shaikh and Atik Khan, respectively, were released on bail. While releasing the co-accused on bail, this Court had inter alia noted that there was prima facie a grave and sudden provocation. There was no pre-meditation. The role attributed to co-accused Aman Shaikh was of assault by means of fist and kick blows. Since the accused were in custody for more than two years, this Court considered it appropriate to exercise the discretion in favour of the co-accused.

5. The learned APP fairly submitted that the role attributed to the applicant is like that of Aman Shaikh.

6. In the CCTV footages the applicant was found to have participated in the assault on the deceased by means of fist blows. The applicant has been in custody since June, 2021. The role attributed to the applicant appears to be that of unleashing fist blows along with the co-accused. In the circumstances, the applicant is entitled to the same dispensation as has been granted to the co-accused. I am, therefore, inclined to exercise the discretion

in favour of the applicant. Hence, the following order.

ORDER

- 1] The application is allowed.
- 2] The applicant Shanawaz Rushidhhin Khan @ Shanu shall be released on bail in C.R. No. 146 of 2021 registered with Wagle Estate 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 Wagle Estate police station on first Monday of every alternate month in between 11 am to 1 pm commencing from February, 2024, till the conclusion of trial.
- 4] 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.
- 5] The applicant shall furnish his contact number and residential address to the investigating officer and shall keep him updated, in case of any change therein.
- 6] The applicant shall regularly attend the proceedings before the jurisdictional Court.
- 7] 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.)