



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2313 OF 2023**

Mohammad Kaif Hanif Merchant ... Applicant
versus
State of Maharashtra and Anr. ... Respondents

Mr. Mateen Shaikh with Mr. Razique Shaikh, Mr. Afrin Khan, Ms. Muskan Shaikh
i/by Mr. Nadeem Shaikh, for Applicant.
Mrs. Geeta P. Mulekar, APP for State.
Mr. Dashrath Vitkar, API, Koparkhairane Police Station present.

CORAM: N.J.JAMADAR, J.

DATE : 18 JANUARY 2024

P.C.

1. Heard the learned Counsel for the parties.
2. At the outset, learned Counsel for the applicant submits that by an order dated 5 January 2024, this Court has granted bail to co-accused Salman Gulam Hussain Khan who is similarly circumstanced.
3. Learned APP fairly submits that the role attributed to the applicant is more or less identical to that of the co-accused Salman Khan.
4. While releasing the co-accused Salman Khan on bail, this Court had, inter alia, observed as under :

“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.”

5. The aforesaid reasons which weighed with this Court apply with equal force to the case of the applicant. I am, therefore, inclined to release the applicant on bail.

6. Hence, the following order :

ORDER

(i) The Application stands allowed.

(ii) The Applicant – Mohammad Kaif Hanif Merchant be released on bail in C.R.No.479 of 2022 registered with Koparkhairane Police Station, on furnishing a PR bond in the sum of Rs.30,000/- and one or two sureties in the like amount to the satisfaction of the Trial Court.

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

(iv) 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.

(v) The applicant shall not tamper with the prosecution evidence. 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.

(vi) 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.

(vii) The applicant shall regularly attend the proceedings before the jurisdictional Court.

(viii) 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.)