



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2460 OF 2023**

Irshad Hussain Mubarak Ali Shaikh	...	Applicant
versus		
State of Maharashtra	...	Respondent

Mr. Murtaza Najmi i/by Mr. Dilip H. Shukla, for Applicant.
Mr. S.R.Aagarkar, APP for State.
Mr. Khade, PI Dongri Police Station and Mr. Sawant PSI Mankhurd Police Station present.

CORAM: N.J.JAMADAR, J.

DATE : 16 JANUARY 2024

P.C.

1. Heard the learned Counsel for the parties.
2. The applicant who is arraigned in C.R.No.522 of 2021 registered with Mankhurd Police Station for the offences punishable under Sections 302, 323 read with Section 34 of the Indian Penal Code and Sections 37(1) and 135 of the Maharashtra Police Act, 1951, has preferred this application to enlarge him on bail.
3. Mohammad Hussain, younger son of the first informant, had been to the mobile repair shop of Zuber. Altercation ensued with Ahmed (Accused No.2), brother of Zuber, over replacing the display of the mobile phone handset. The applicant (accused No.4) and co-accused Sarfaraz (accused No.3), who are the friends of Jainul, another co-accused, came thereat. As Mohammad Hussain was assaulted, he called the first informant. While the first informant tried to resolve the quarrel, her elder son

Akbar (deceased), came thereat on an Activa scooter. When the deceased questioned the co-accused Jainul (accused No.1) and Ahmed (accused No.2) as to why Mohd. Hussain was assaulted, an altercation and fisticuffs ensued between the deceased and Jainul. Co-accused Jainul picked up a hot iron rod and gave blow on the chest of the deceased. While the deceased was trying to escape from the clutches of the accused by his Activa Scooter, the applicant and co-accused Sarfaraz (accused No.3) accosted him. The applicant had allegedly removed the key of the scooter. Thereafter, co-accused Ahmed gave a blow by means of knife on the thigh of the deceased. He was shifted to a hospital in a critical condition. Eventually, the deceased succumbed to the injuries.

4. Learned Counsel for the applicant submitted that the incident had occurred at the spur of the moment. There was no pre-mediation. The applicant had not assaulted either the first informant's younger son Mohammad or the deceased. The applicant is in custody since 2 and half years. Therefore, the applicant be released on bail.

5. In opposition to this, learned APP resisted the prayer for bail. It was submitted that the applicant and co-accused Sarfaraz (accused No.3) had restrained the deceased and after they caught hold of the deceased, co-accused Ahmed (accused No.2) had assaulted him by means of knife. Therefore, the applicant can also be said to have shared the common intention to commit murder of the deceased.

6. I have perused the report under Section 173 of the Code, especially the statements of the first informant and Mohammad Hussain as well as Ashraf Qureshi, another eye witness. Prima facie, it appears that the quarrel took place over a trivial issue. Initially, neither the applicant nor the deceased were involved in the altercation which had ensued between Mohammad Hussain, younger son of the first informant, and Zuber and Ahmed (accused No.2). It appears that co-accused Jainul initially assaulted the deceased by means of hot iron rod, which he picked up from the adjoining barbecue shop. The role attributed to the applicant is that of restraining the deceased when he tried to run away from the accused. Thereafter, co-accused Ahmed (accused No.2) gave blow on the left thigh of the deceased.

7. In the aforesaid alleged occurrence, prima facie, no role of assault has been attributed to the applicant. In the circumstances, whether the applicant also shared common intention to cause death of the deceased appears to be a matter for trial. It seems that in the wake of the altercation, co-accused Jainul (accused No.1) and Ahmad (accused No.2) have assaulted the deceased by means of weapons with which they were armed. Applicant and Sarfaraz (accused No.3) had reached the place of occurrence after the initial altercation between Ahmad (accused No.2) and Mohammad Hussain. Thus, was there pre-meditation would be a matter for trial. Iron rod was picked up by Jainul (accused No.1) from the adjoining barbecue shop.

8. The applicant has been in custody for more than two years and four

months. Thus, having regard to the role attributed to the applicant, I am inclined to exercise the discretion in favour of the applicant. The applicant appears to have roots in society. The apprehension on the part of the prosecution can be taken care of by imposing conditions.

9. Hence, the following order :

ORDER

- (i) The Application stands allowed.
- (ii) The Applicant – Irshad Hussain Mubarak Ali Shaikh be released on bail in C.R.No.522 of 2021 registered with Mankhurd 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 the Mankhurd station on first Monday of every month in between 11 am to 1 pm till the conclusion of the trial.
- (iv) The applicant shall not enter the limits of Mankhurd Police Station for a period of three years or till the conclusion of the trial, whichever is earlier, except for attending the police station on the scheduled dates.
- (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.)