

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

BAIL APPLICATION NO. 2490 OF 2023

Saiyyad Avesh Saiyyad Israel

.Applicant

Versus

The State of Maharashtra & Anr.

.Respondents

Mr. S. K. Ali a/w. Mr. Asif Ali, Ms. Shaibi Fatma, Ms. Pratibha Gupta
i/b. M/s. A. A. Siddiqui & Associates, Advocates, for the Applicant.
Mr. S. M. Mangaonkar, APP, for the Respondent – State.

CORAM: MADHAV J. JAMDAR, J.

DATE: 12.04.2024

P. C.

1. Heard Mr. Ali, 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.	110 of 2020
2. Date of registration of F.I.R.	17.10.2020
3. Name of Police Station	Pawarwadi Police Station, Malegaon, District - Nashik
4. Section/s invoked	307, 324 of the I.P.C., 1860; 3/25 and 5/27 of the Arms Act, 1959.
5. Date of incident	17.10.2020
6. Date of arrest	28.02.2023
7. Date of filing of Supplementary Charge-sheet	21.03.2023

3. As per the prosecution case, the Injured – Shaikh Gufran

Shaikh Ibrahim and Accused No.1-Mudasser were residing in the same locality. About 7-8 years earlier said injured had seen the brother of the co-Accused No.1-Mudaseer i.e. Mushraf together with a woman and therefore the Accused No. 1 had told him not to tell about the said incident to anyone else. However, thereafter, the Injured and the said co-Accused No.1 were on talking terms. As per the prosecution case, said co-Accused No.1-Mudaseer came on a motor-cycle at about 5.00 p.m. on 17.10.2020. The Applicant was the rider and Accused No.1 was the pillion rider. As per the prosecution case, said co-Accused No.1-Mudaseer fired at the Injured. The only role attributed to the present Applicant i.e. Accused No.2 is that he was riding the motor-cycle used in the offence in question.

4. Mr. Ali, learned Counsel for the Applicant submitted that the Applicant's name is not mentioned in the F.I.R.. He submitted that his name was mentioned for the first time in the supplementary statement dated 02.11.2020, however, no role is attributed to him. He submitted that the Applicant is incarcerated since more than one year and two months and that even the Charge is also not framed yet. He submitted that as per the prosecution case, there are 23 witnesses proposed to be examined by the prosecution. He submitted that there are no antecedents. There is no independent reliable evidence to connect the Applicant with the offence in question. He submitted that no motive is alleged against the Applicant. He therefore submitted that the Applicant may be granted bail.

5. On the other hand, Mr. Mangaonkar, learned APP vehemently opposed the bail Application. He submitted that the role attributed to the Applicant is that he was riding the motor-cycle when the pillion rider-Accused No.1 fired at the injured. He therefore submitted that the Bail Application be rejected.

6. A perusal of the record shows that the incident has taken place on 17.10.2020. F.I.R. was lodged on 17.10.2020. The Applicant's name is not mentioned in the F.I.R.. His name is mentioned for the first time in the supplementary statement dated 01.11.2020. In the said statement also, no role is attributed to the present Applicant. The Applicant was arrested on 28.02.2023 and is incarcerated since more than one year and two months. As per the prosecution case, there are about 23 witnesses proposed to be examined by the prosecution. Till date, there is no further progress in the trial. Even charge is also not framed. The trial is likely to take a considerably long time.

7. The Applicant does not have any criminal antecedents.

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

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

10. In view thereof, the following order:-

ORDER

(a) The Applicant - Saiyyad Avesh Saiyyad Israel be released on bail in connection with C. R. No. 110 of 2020 registered with the Pawarwadi 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 Pawarwadi Police Station, Malegaon, District – Nashik on the Sunday of every week 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 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.

11. The Bail Application is disposed of accordingly.

12. It is clarified that 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.]