

Shabnoor

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

BAIL APPLICATION NO.2639 OF 2023

Nawaz Shah Ramzan Shah

... Applicant

V/s.

The State of Maharashtra

... Respondent

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Ms. Aisha Z Ansari, for Applicant.

Mr. Pankaj P. Deokar, APP for State/Respondent.

CORAM : AMIT BORKAR, J.

DATED : MARCH 22, 2024

P.C.:

1. This is an Application filed under Section 439 of the Code of Criminal Procedure, 1973 ("Cr.P.C." for short) in connection with Cr. No.38 of 2022 registered with Ayesha Nagar Police Station, Malegaon, Nashik for offences punishable under Sections 307, 326, 324, 323, 504, 506 r/w 34 of the Indian Penal Code, 1860 ("IPC" for short), under Sections 4, 25 of the Arms Act, and under Sections 37(1)(3) r/w 135 of the Maharashtra Police Act.

2. According to the prosecution, on 16 July 2022 at about 7:30 p.m., the younger brother of informant Akhil Khan gave a slap to the minor daughter of accused Abdul Rajjak Shaha which resulted in quarrel between the parties which was later amicably settled. However, on 17 July 2022 at about 11:00 noon, there were

quarrel between the children. Hence, sister-in-law of informant went to the wife of accused Abdul Rajjak Shaha which resulted in quarrel. The informant alongwith his nephew Mujumil Khan and brother-in-law Ramzan Shaikh Gulam went to the spot. At that time, the applicant alongwith other three co-accused came there. The applicant was carrying sword in his hand whereas the accused/Israel @ Gaddya having iron pipe in his hand. They abused the informant and the applicant gave blow of sword on the head of Mujumil Khan and caused him grievous injury. The accused/Israel assaulted the informant with the iron pipe on his shoulder and legs. The applicant and other co-accused assaulted the informant and others by fist and blows. People gathered on the spot shifted the injured persons to the hospital. The informant Shaffique Khan lodged FIR bearing C.R.No.I-38/2022. The Applicant was arrested on 24 July 2022.

3. Learned Advocate for the Applicant submitted that the investigation is completed and the chargesheet is filed. The three other accused have been released on bail. The injured have been discharged from the hospital. Learned Advocate for the applicant further states that the applicant is in jail since 24 July 2022. The applicant has no antecedents to his discredit. He is ready to abide all the conditions imposed by this Court. She, therefore, prayed for released of accused on bail.

4. Per contra, learned APP submitted that the material on record in the form of statements of injured witnesses and other witnesses indicate that the specific role assigned to the applicant. The material on record indicates that the applicant assaulted the

injured with the deadly weapon i.e. sword on vital part of head which corresponding injury in the medico-legal certificate and in the evidence. Therefore, considering the nature and gravity of offence, the application deserves to be rejected. He further submitted that the role assigned to the other co-accused are totally different who were not carrying deadly weapon nor assaulted or injured on vital part.

5. Having considered the record and material produced on record, it appears that the applicant is assigned role mentioned in the FIR. Prima facie, it shows that the applicant was carrying deadly weapon sword when he arrived at the spot. Prima facie, it appears that he assaulted the injured on vital part i.e. on head. The other co-accused have been assigned the role of use of iron pipe or other weapons which can not be treated as deadly weapon nor there is any allegation against them of assault on vital part. Considering the nature of injury as indicated in the medico legal certificate which prima facie corresponds with the nature of material which indicates that the applicant was carrying sword causing injury on head, in my opinion, no case for release of applicant on bail is made out. However, it will be open to the application to apply for bail if the trial is not commenced within one year.

6. The application is, therefore, rejected.

(AMIT BORKAR, J.)