

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

BAIL APPLICATION NO. 2962 OF 2023

Mr. Imran Sultan Shaikh @ Altaf.	...Applicant
VS.	
The State of Maharashtra	...Respondent

Mr. Mujahid Ansari, Advocate for the Applicant.

Mr. Prashant Jadhav, APP, for the Respondent/State.

PI Pravin V. Kharade, Mahim Police Station, Mumbai.

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**CORAM : N. J. JAMADAR, J.
DATE : MAY 6, 2024**

P.C.:

1. Heard the learned counsel for the applicant and the learned APP for the State.
2. The applicant who is arraigned in C.R. No. 25 of 2022 registered with Mahim Police Station for the offences punishable under sections 120(B), 302, 307, 201 read with section 34 of the Indian Penal Code, 1860 and sections 4, 25 of the Arms Act, 1959 seeks to be enlarged on bail.
3. Co-accused-Heena, Balkrishna Gupta and the applicant had entered into a conspiracy to kill the deceased.
4. The deceased had allegedly circulated an obscene video involving co-accused Kamruddin Khan. The applicant allegedly had a grudge against the deceased. On the night intervening

2nd February and 3rd February, 2022, Heena Shaikh met the deceased, Wasim, at the seashore at Mahim. Initially, Heena assaulted the deceased by means of knife. Thereafter, co-accused Kamruddin and Balkishan Gupta assaulted the deceased by means of sharp weapons. The co-accused Heena also had self-inflicted injuries and an effort was made to show that the deceased and co-accused Heena were assaulted by unknown person.

5. Learned counsel for the applicant submitted that the applicant was implicated in this case while he was already in custody with DCB CID. The prosecution has not shown the date of arrest of the applicant though it is stated that he was taken in custody in this crime on 4th February, 2022. The applicant was sought to be implicated on the basis of the CDR and phone location of the co-accused. However, no material was compiled in the charge-sheet to substantiate the said fact. In any event, it is the prosecution case that the applicant was not present at the time of the alleged occurrence. In the absence of any cogent material, the applicant deserves to be enlarged on bail.

6. Learned APP submitted that in the statement of the brother and mother of the deceased, it is specifically stated that on 30th January, 2022 when the deceased returned home, he

had an injury on his hand which was allegedly caused by the applicant in a quarrel over mobile hand set. Attention of the Court was invited to the disclosure statement of Heena, the co-accused, wherein it is stated that at the instance of the applicant and other co-accused and in pursuance of criminal conspiracy, Heena(A-1) and co-accused Kamruddin and Balkishan Gupta, had killed the deceased.

7. First and foremost, the disclosure statement of an accused is not a legal evidence against non-maker co-accused. In the case in hand, even if disclosure statement is taken into account, it prima facie emerges that the applicant was not present at the time of the alleged occurrence. In any event, the authorship of homicidal death cannot be attributed to the applicant. The applicant, it seems, is sought to be roped as a confederate in the criminal conspiracy. For that purpose, the prosecution proposes to rely on the statements of the mother and brother of the deceased.

8. It is true that conspiracies are hatched in secrecy and rarely there is direct evidence of conspiracy. However in the case in hand, apart from the statements of the brother and mother of the deceased and the disclosure statements of co-accused, there does not appear to be any other cogent material

to connect the applicant with the alleged offence. Moreover, the prosecution has made an endeavour to attribute different motives to each of the accused for the murder of the deceased. At any rate, the evidence against the applicant would be of circumstantial in nature.

9. In the aforesaid view of the matter I am inclined to exercise discretion in favour of the applicant.

10. Hence, the following order.

ORDER

1] The application stands allowed.

2] The applicant Imran Sultan Shaikh @ Altaf be released on bail in C.R. No. 25 of 2022 registered with Mahim 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 Mahim Police Station on the first Monday of every alternate month between 11 am to 1 pm till conclusion of the 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 there is any change.

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.

8] Application is disposed of accordingly.

(N. J. JAMADAR, J.)