

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3070 OF 2023

Alam Karim Shaikh ...Applicant
vs.
The State of Maharashtra ...Respondent

Mr. Himanshu Shinde, for the Applicant.
Mrs. G.P. Mulekar, APP, for the Respondent/State.

CORAM : N. J. JAMADAR, J.
DATE : JANUARY 22, 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.133 of 2023 registered with Varsova police station for the offences punishable under sections 302, 141, 143, 144, 147, 148 and 149 of Indian Penal Code, 1860 seeks to be enlarged on bail.

3. On 18th March, 2022 Satish Naik, the injured and his friends Suraj Zinjotia (the deceased) were having drinks on the road near the mangrov behind Sat bungalow bus depot Andheri. Three persons namely Alam Shaikh (the applicant), Safarul Shaikh and Abbasuddin Shaikh crossed them. The deceased demanded Safarul to give him money to have liquor. Safarul Shaikh declined to pay the deceased. The deceased abused Safarul and also pelted stone, which hit the head of Safarul. After a while Ravi Singh and Rohit Ughade

passed the injured and the deceased. The later demanded Ravi to pay money to have liquor. Ravi also declined and thereupon a quarrel ensued.

4. Ravi Singh called Sonu Shaikh and Ashish Singh. They came armed with wooden stick and plank. Ravi Singh caught hold of the deceased. The co-accused Sonu Shaikh assaulted the deceased by means of wooden stick and plank. The applicant and co-accused Safarul and Abbasuddin also returned to the scene of occurrence armed with bamboo. They also assaulted the deceased. The applicant allegedly joined in the assault and gave fist and kick blows to the deceased. When Satish went to rescue the deceased, he was also assaulted by the accused.

5. The learned counsel for the applicant submitted that the role attributed to the accused is that of alleged assault by means of fist and kick blows. In fact the deceased and the injured had raked up the quarrel. The deceased and the injured had assaulted the accused. A cross FIR bearing C.R. No. 134 of 2022 was registered against the deceased and the injured. Ravi Singh had sustained grievous injuries on account of assault perpetrated by the deceased and the injured. Attention of the Court was invited to the copy of the FIR and the injury report of Ravi Singh.

6. A perusal of the postmortem report indicates that the

deceased died on account of shock due to craniocerebral injury with multiple blunt injuries over the body. Medical officer further opined that the injuries sustained by the deceased were possible on account of assault by bamboo stick and wooden plank and those were sufficient in the ordinary course of nature to cause death.

7. It is pertinent to note that the applicant was not armed with any weapon. Secondly, it appears that the altercation ensued with both Safarul Shaikh and Ravi Singh as the deceased had demanded money from them and they refused and the deceased abused and assaulted them.

8. It prima facie appears that two groups of persons were antagonized with the aforesaid conduct of the deceased. Few members of both the groups were armed with sticks and wooden planks. In the circumstances, the question as to whether the applicant can be roped in by invoking section 149 of the Penal Code would warrant adjudication.

9. In any event, the applicant was unarmed. The medical officer has opined that the injuries caused by wooden stick and plank might have resulted in the death of the deceased. The applicant is in the custody since 19th March, 2022. The trial, in the backdrop of the nature of the accusation and the number of accused involved, may take time. Further detention of the applicant does not seem to be

warranted. Hence, I am inclined to release the applicant on bail.

Thus, the following order.

ORDER

- 1] The application is allowed.
- 2] The applicant be released on bail in C.R. No.133 of 2022 registered with Varsova 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 Varsova police station on the first Monday of every alternate month in between 11 am to 1 pm till the 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.

Application disposed.

(N. J. JAMADAR, J.)