

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

BAIL APPLICATION NO. 3207 OF 2023

SANTOSH
SUBHASH
KULKARNI

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Date: 2024.03.06
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Mustaq Sayeed Khan ...Applicant

Versus

The State of Maharashtra ...Respondent

Mr. Karan Vishwajit Mertia, a/w Prajakta Tawde, i/b Tanveer
Farooqui, for the Applicant.

Mr. Tanveer Khan, APP for the State/Respondent.

PSI Umaji Kadav, Dindoshi Police Station, present.

CORAM: N. J. JAMADAR, J.

DATED: 5th MARCH, 2024

ORDER:-

1. Heard the learned Counsel for the parties.
2. This is an application for bail in Sessions Case No.307 of 2017 arising out of CR No.402 of 2017 registered with Dindoshi Police Station for the offences punishable under Sections 120B, 307, 324, 143, 144, 147, 148 and 506(2) of the Indian Penal Code, 1860 ("the Penal Code"), Sections 4 and 25 of the Indian Arms Act, 1959 and Section 37(1) read with Section 135 of the Maharashtra Police Act, 1951.
3. The applicant, his mother, brothers and other co-accused had allegedly formed an unlawful assembly and in prosecution of the common object of the unlawful assembly the applicant

had perpetrated a murderous assault on the first informant. The applicant had allegedly attempted to commit murder of the son of the first informant as well by throwing a sword at the son of the first informant. The learned Counsel for the applicant submitted that the applicant has been in custody since 23rd May, 2017. Though, six years have elapsed, yet the charge has not been framed. It is extremely unlikely that the trial can be concluded within a reasonable period.

4. I have perused the report under Section 173 of the Code of Criminal Procedure, 1973 ("the Code") and the documents annexed with it. The injury certificate of Abdul Shaikh, the first informant, indicates that he had sustained two incise wounds on the right and left parietal region. Both the injuries appear to have been caused by chopper and sword and designated as grievous.

5. In the FIR and the statement of the first informant, who had sustained simple injuries, purportedly on account of assault perpetrated by Najim, one of the members of the unlawful assembly in a prior occurrence, the role of unleashing blows by means of sword and chopper has been attributed to the applicant and co-accused Najim. Rest of the persons, were also allegedly armed with weapons. However, only the applicant

and Najim unleashed blows by means of their respective weapons. The co-accused Najim had also allegedly assaulted the first informant by means of chopper. Only two injuries were found on the person of the first informant. The Medical Officer has opined that both the injuries were possible by chopper and sword. In the circumstance, whether the injuries sustained by the first informant are attributable to the applicant or Najim would be matter for adjudication at the trial.

6. Evidently, the applicant has been in custody for more than six years. Charge has yet not been framed. Considering the pace of the proceedings before the Court of Session, it is unlikely that the trial can be concluded within a reasonable period. I am, therefore, inclined to release the applicant on bail, on the count of long period of incarceration without a real prospect of conclusion of trial as well.

7. Hence the following order:

: O R D E R :

- (i) Application stands allowed.
- (ii) The applicant be released on bail in Sessions Case No.307 of 2017 arising out of CR No.402 of 2017 registered with Dindoshi Police Station, on furnishing a P.R. Bond in the sum of Rs.30,000/- with one or two

sureties in the like amount.

- (iii) The applicant shall mark his presence at the concerned police station on the first Monday of every alternate month in between 10.00 am to 12.00 noon for a period of three years or till conclusion of the trial, whichever is earlier.
- (iv) The applicant shall stay away from the limits of Mumbai suburban districts for the period of three years or till the conclusion of trial, whichever is earlier, except to mark his presence at Police Station and attend the Court proceedings.
- (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 stands disposed.

[N. J. JAMADAR, J.]