

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3319 OF 2023

Hamid Mehmood Khan @
Taklya @ Jalal

...Applicant

vs.

The State of Maharashtra

...Respondent

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WITH

BAIL APPLICATION NO.3322 OF 2023

Mohsin Ahmed Shaikh

...Applicant

vs.

The State of Maharashtra

...Respondent

Mr. Zeeshan Khan a/w. F. Tambe, for the Applicant in BA No. 3319 of 2023.

Mr. M.G. Patil, APP, for the Respondent/State.

Ms. Roohita Shaikh a/w. Mr. Javed Shaikh, Mr. Anil Nile and Mr. V.V. Bambarde, for the Applicant in BA No. 3322 of 2023.

Mr. S.R. Agarkar, APP for the State in BA No. 3322 of 2023.

CORAM : N. J. JAMADAR, J.

DATE : FEBRUARY 7, 2024

P.C.:

1. Heard the learned counsel for the applicants and the learned APP for the State.

2. The applicants, along with the co-accused, have been arraigned for the offences punishable under sections 302, 142, 143, 145 of Indian Penal Code, 1860 and sections 37(3) read with 135 of Maharashtra Police Act, 1951 in C.R. No. 146 of 2021 registered with Wagle Estate police station, Thane. The applicants seeks to be enlarged on bail.

3. At the outset, the learned counsel for the applicants invited attention of the Court to various orders passed by this Court releasing the co-accused on bail. The learned counsel submit that the applicants are similarly circumstanced.

4. The deceased had allegedly molested a minor daughter of co-accused Atik Khan. The applicant and the co-accused allegedly accosted the deceased and belabored him. The deceased was thereafter taken to police station and noticing the injuries which were found on the person of the deceased, he was shifted to Chatrapati Shivaji Maharaj Hospital, Kalwa, where the deceased was declared dead.

5. The learned counsel for the applicant submitted that the co-accused Atik Khan, who was allegedly armed with a stick, and, in a sense, the principal accused, has been granted bail. Attention of the Court was invited to the orders passed by this Court in BA No. 192 of 2023 and BA No. 2764 of 2023 whereby the co-accused Aman Shaikh and Atik Khan, respectively, were released on bail. While releasing the co-accused on bail, this Court had inter alia noted that there was prima facie a grave and sudden provocation. There was no pre-meditation. The role attributed to co-accused Aman Shaikh was of assault by means of fist and kick blows. Since the accused were in custody for more than two years, this Court considered it

appropriate to exercise the discretion in favour of the co-accused.

6. By an order dated 2nd January, 2024 I had ordered the release of Shahnawaz Khan @ Shanu BA No. 2112 of 2023 opining, inter alia, that the role of the said accused was similar to the role attributed to the co-accused Atik Khan and others who were released on bail.

7. The learned APP fairly submitted that the role of Hamid Khan, the applicant in BA No.3319 of 2023 is more or less similar to the role of the accused who have been released on bail. It was, however, submitted that the applicant Mohsin Shaikh allegedly assaulted the deceased by means of stick.

8. In the circumstances, where a number of persons had assaulted the deceased allegedly on account of sudden provocation due to the act of the deceased molesting the daughter of co-accused Atik Khan, I find it rather difficult to make a distinction between the role of Mohsin Shaikh from that of the other accused. The applicant Mohsin is in custody since 30th May, 2021.

9. The applicant Hamid Khan is in custody since 2nd June, 2021. It is unlikely that the trial can be concluded within a reasonable period.

10. I am therefore impelled to hold that the applicants are also entitled to the same dispensation as has been granted to the co-

accused.

Hence, the following order.

ORDER

- 1] The applications stand allowed.
- 2] The applicants Hamid Mehmood Khan @ Taklya @ Jalal and Mohsin Ahmed Shaikh shall be released on bail in C.R. No. 146 of 2021 registered with Wagle Estate police station, on furnishing a P.R. Bond of Rs. 30,000/- with one or more sureties in the like amount, each.
- 3] The applicants shall mark their presence at Wagle Estate police station on first Monday of every alternate month in between 11 am to 1 pm till the conclusion of trial.
- 4] The applicants 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 applicants shall furnish their contact numbers and residential addresses to the investigating officer and shall keep them updated, in case of any change therein.
- 6] The applicants 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.

(N. J. JAMADAR, J.)