

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3372 OF 2023

Azharuddin @ Tinu Habib Ansari	...Applicant
vs.	
The State of Maharashtra	...Respondent

Mr. Abdul Shaikh i/b. Mr. Mohd. Kazi, for the Applicant.
Mrs. Geeta Mulekar, APP, for the Respondent/State.

CORAM : N. J. JAMADAR, J.
DATE : JANUARY 03, 2024

P.C.:

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

2. This is an application for bail in connection with C.R. No. 493 of 2022 registered with Ulhasnagar police station for the offences punishable under sections 307, 323, 504 and 506 read with 34 of Indian Penal Code, 1860 and section 7 of Criminal Law Amendment Act and section 4 read with 25 of Indian Arms Act.

3. The gravamen of indictment against the applicant is that on 24th October, 2022 the applicant and the co-accused had allegedly perpetrated a murderous assault on Kishor Shinde, the brother in law of the first informant Anand Dhotre. The first informant, inter alia, alleged that when he had been to Azad Nagar Chowk, he found that the applicant and the co-accused Saurabh @ Taklya and Alam Siddiqui were abusing and assaulting the injured Kishor Shinde and

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his friend Saurabh Rajbhar. The co-accused Saurabh @ Taklya caught hold of the injured. The co-accused Kochi @ Sharma gave a blow by means of knife on the stomach and shoulder of the injured. The co-accused Alam Siddiqui assaulted Saurabh @ Rajbhar by means of knife. The applicant had allegedly assaulted the injured and Saurabh @ Rajbhar by means of fist and kick blows.

4. The learned counsel for the applicant submitted that co-accused Saurabh @ Taklya has been released on bail. Attention of the Court was invited to an order dated 8th August, 2023 passed by learned Additional Session Judge enlarging him on bail.

5. The learned APP resisted the prayer for bail.

6. Prima facie, it is evident that the applicant is similarly circumstanced like the co-accused Saurabh @ Taklya. The applicant was not armed with any weapon nor the applicant allegedly assaulted the injured and witness Saurabh by any weapon. The role attributed to the applicant is that of giving fist blows to the injured and Saurabh @ Rajbhar. In fact, co-accused Saurabh @ Taklya who has been ordered to be released on bail has been attributed with the role of catching hold of Kishor Shinde and thereby facilitating the assault by means of deadly weapon.

7. In the circumstances of the case, whether the applicant shared a common intention to commit murder of the injured Kishor

Shinde and Saurabh Rajbhar, is a matter of adjudication at the trial. The applicant is in custody since 25th October, 2022. Investigation is complete for all intent and purpose. Charge sheet has been lodged.

8. In the backdrop of the role attributed to the applicant and the period of incarceration, I am impelled to exercise the discretion in favour of the applicant.

Hence, the following order.

ORDER

1] The application is allowed.

2] The applicant Azharuddin @ Tinu Habib Ansari be released on bail in C.R. No. 493 of 2022 registered with Ulhasnagar 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 Ulhasnagar police station on first Monday of every month in between 11 am to 1 pm for two years or till conclusion of the trial whichever is earlier.

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] 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.)