

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3378 OF 2023

Faisal Qurban Khan ...Applicant

vs.

The State of Maharashtra ...Respondent

Ms. Farheen Chaudhari a/w. Ms. Noori Khan, for the Applicant.
Ms. Gauri Rao, APP, for the Respondent/State.

CORAM : N. J. JAMADAR, J.

DATE : MARCH 19, 2024

P.C.:

1. Heard the learned counsel for the parties.
2. The applicant, who is arraigned in C.R. No. 683 of 2022 registered with Bhandup police station for the offences punishable under sections 307, 504 and 506(ii) read with 34 of Indian Penal Code, 1860 seeks to be enlarged on bail.
3. Sujal (the injured) is the son of the first informant. He resides at Ganeshpada, Diva(w), Dist. Thane. On 5th December, 2022, the injured had gone to Bhandup to meet his friend. While the injured was in conversation with his friends, the applicant allegedly gave blows by means of a sharp knife on the neck of the injured. He raised alarm but nobody came to the rescue of the injured. Somehow the injured ran away. An associate of the applicant allegedly pelted a paver block. The applicant again caught hold of the injured

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and started to assault the injured by means of a cutter. As peoples raised alarm, the applicant and his friends fled away. Upon being apprised by the injured and his friend Harshad, the first informant approached Fortis Hospital where the injured was initially admitted and thereafter lodged the report.

4. Ms. Chaudhari, the learned counsel for the applicant submitted that the genesis of the occurrence has been suppressed. In fact, the applicant was assaulted by the injured and his friends. To preempt any action with regard to the said assault the injured had self-inflicted injuries and, subsequently, a false report of assault by means of sharp weapon by the applicant was lodged. Attention of the Court was invited to the injury certificate of the injured issued by Fortis Hospital and Bhandup Criticare Hospital as well as the medico-legal papers of the applicant evidencing the medical examination of the applicant at BMC Hospital.

5. The learned APP resisted the prayer for bail. It was submitted that the injured had narrated the manner in which he was assaulted. Moreover, the statements of the witnesses lend support to the claim of the injured. Banking upon the injury certificate which record that the injured had sustained grievous injuries, the

learned APP submitted that a very strong prima facie case is made out against the applicant. It was further urged that as a number of crimes have been registered against the applicant, he does not deserve to be enlarged on bail.

6. I have perused the statement of the injured, the first informant, witness Harshad, a friend of the injured, and the injury certificates of both the injured and the applicant.

7. Prima facie, there is substance in the submission of Ms. Chaudhari that the genesis of the occurrence has not been fully disclosed. The wound certificate issued by Fortis Hospital categorically records that the injured had CLW on face and neck. However, the injured had narrated the alleged history of self-inflicted injury with a blade. Likewise, in the injury certificate issued by Bhandup Criticare Hospital, it has been recorded that the history of self-inflicted injury was narrated.

8. The learned APP attempted to wriggle out of the situation by submitting that the certificate of Criticare Hospital, Bhandup indicates that the patient was in a drowsy state and possibly under influence of intoxicant.

9. At this stage, the said aspect cannot be delved into deeply. Prima facie, it appears that two hospitals had recorded the self-inflicted injury. Had the matter been in the realm of narration of self-inflicted injuries only, probably the submission of learned APP that the history was narrated mistakenly could have carried some substance. However, there are two concomitant factors.

10. First, the injury certificate of the applicant records that there was a deep lacerated wound over left forearm, CLW over neck and lacerated wound over right hand near right thumb and the applicant had narrated assault with sharp object by 3-4 persons. Second, in the statement of Sujal, there is also a reference to the fact that the injured had allegedly thrown the cutter at the applicant and the latter had sustained an injury on his hand.

11. Cumulatively, at this stage, an inference becomes justifiable that the entire occurrence is not reflected in the prosecution version and the version offered by the applicant competes in probability, especially, in view of the fact that history of self-inflicted injury was narrated at two hospitals. Moreover, there is a discrepancy in the weapon of assault with which the applicant was allegedly armed.

12. I am, therefore, inclined to hold that a prima facie case is made out in favour of the applicant.

13. Indeed number of crimes appear to have been registered against the applicant. However, in the facts of the given case if a prima facie case is not made out, personal liberty can not be deprived only on the ground that the accused has antecedents. In a situation of this nature, apprehension on the part of the prosecution can be taken care of by imposing appropriate conditions.

Hence, the following order.

ORDER

- 1] The application stands allowed.
- 2] The applicant Faisal Qurban Khan be released on bail in C.R. No. 683 of 2022 registered with Bhandup 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 Bhandup 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 enter the limits of Thane District for a period of two weeks or till the conclusion of the trial,

whichever is earlier.

5] 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.

6] 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.

7] The applicant shall regularly attend the proceedings before the jurisdictional Court.

8] 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.)