



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2893 OF 2023**

Aamir Noor Mohd. Shaikh @ Monchu ... Applicant
versus
State of Maharashtra ... Respondent

WITH
BAIL APPLICATION NO.3455 of 2023

Mohd. Anis Mohd. Hanif Khan ... Applicant
versus
State of Maharashtra ... Respondent

Ms. Shaikh Afreen Bano for Applicants in both matters.
Mr. S.R.Aagarkar, APP for State.
Mr. A.S.Jadhav, PSI, Ghatkopar Police Station, Mumbai.

CORAM: N.J.JAMADAR, J.

DATE : 25 JANUARY 2024

P.C.

1. Heard the learned Counsel for the parties.
2. The applicants who are arraigned in C.R.No.9 of 2020 registered with Ghatkopar Police Station under Sections 307, 343, 450, 143, 144, 147, 148, 149, 506(2), 504 read with Section 34 of the Indian Penal Code, Section 4 read with Section 25 of the Arms Act, 1959 and Sections 37(1) read with 135 of the Maharashtra Police Act, 1951 have preferred these applications to enlarge them on bail.
3. Co-accused Abdul Rahim Yakub Shaikh @ Babarrahim and his brothers Kayyum Shaikh and Karim Shaikh indulged in offences in Sanjay Nagar area. The

applicants are stated to be the associates of Babarahir. They had created a reign of terror in the said locality.

4. On 3 January 2020 in between 6 to 6.30 p.m., Babarahir came in front of the house of the first informant armed with a sword and threatened to kill her as she had lodged complaint against his brother, with the Police. The applicants along with the co-accused accompanied Babarahir.

5. The first informant alleges, the applicants and the co-accused formed an unlawful assembly and in prosecution of the common object of the unlawful assembly committed rioting armed with deadly weapons. When the first informant and her children raised alarm, the residents came to their rescue. However, the accused threatened them with dire consequences. Two persons namely Taufiq Shaikh and Raju @ Hussain Khan came to the rescue of the first informant. Thereupon, Babarahir assaulted Taufiq by means of sword. After Taufiq fell down, Raju tried to save him and, thereupon, co-accused Kayyum assaulted Raju by means of sword.

6. Learned Counsel for the applicants submitted that the first informant as well as the injured witnesses – Taufiq and Raju have not attributed any role of assault to the applicants. There is a bald allegation that the applicants were also the members of the alleged unlawful assembly. The applicant Aamir has been in custody since 5 January 2020 and the applicant Mohd Anis has been in custody since 17 June 2021. Rest of the arrested co-accused have been released on bail.

7. Learned APP resisted the prayer for bail. It was submitted that the applicants were the members of the unlawful assembly and the applicants shared the common object to commit offence of attempt to commit murder of the injured. Moreover, there are antecedents which indicate that the applicants have been indulging in bodily offences. Therefore, the applicants does not deserve bail.

8. I have perused the allegations in the FIR and the statements of Raju and Taufiq, the injured witnesses. I have also perused the injury certificates of the said injured. Injured witnesses have allegedly suffered injuries by means of sword attributable to co-accused Babarrahim and Kayyum. I find substance in the submission on behalf of the applicants that apart from the allegation of being the members of the alleged unlawful assembly, no role has been attributed to the applicants. Prima facie it does not appear that the applicants were armed with any weapon. None of the applicants had perpetrated assault upon either the first informant or the injured.

9. The applicant Aamir has been in custody since more than four years and the Applicant Mohd. Anis has been in custody since two and half years and having regard to the nature of the occurrence, it is unlikely that the trial can be concluded in a reasonable period. Indeed, there are antecedents of the applicants. However, having regard to the nature of the occurrence and the absence of any role having been attributed to the applicants, in my view, the antecedents of the applicants do not constitute an inhibiting factor to deny the relief of bail. I am, thus, inclined to exercise

the discretion in favour of the applicants.

10. Hence, the following order :

ORDER

(i) The Applications stand allowed.

(ii) The Applicants – Aamir Noor Mohd. Shaikh @ Monchu and Mohd. Anis Mohd. Hanif Khan be released on bail in C.R.No.9 of 2020 registered with Ghatkopar Police Station on furnishing a PR bond in the sum of Rs.30,000/- each and one or two sureties in the like amount to the satisfaction of the trial Court.

(iii) The applicants are permitted to furnish cash security in lieu of surety for a period of six weeks.

(iv) The applicants shall mark their presence at Ghatkopar Police Station on the first Monday of every alternate month in between 11 am to 1 pm till the conclusion of the trial.

(v) The applicants shall not tamper with the prosecution evidence. The applicants 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 applicants shall furnish their contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.

(vii) The applicants 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 disposed.

(N.J.JAMADAR, J.)