

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3571 OF 2023

Shahid Javed Sultan Khan

...Applicant

vs.

The State of Maharashtra

...Respondent

VISHAL
SUBHASH
PAREKAR

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Mr. Ashish Jagtap i/b. Mr. B.L. Jagtap, for the Applicant.

Mr. Y.M. Nakhwa, APP, for the Respondent/State.

Mr. Gabaji Chimate, Sr.PI and Mr. R.N. Loke, PSI, Sakinaka police station present.

CORAM : N. J. JAMADAR, J.

DATE : FEBRUARY 01, 2024

P.C.:

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

2. The applicant, who is arraigned in C.R. No.410 of 2017 registered with Sakinaka police station for the offences punishable under sections 302, 323, 324, 504, 143, 144, 147, 148 and 149 read with 34 of Indian Penal Code, 1860, seeks to be enlarged on bail.

3. On 30th July, 2017 Mujjamil Shaikh (the deceased) had intervened in a quarrel between Narfat Singh and the applicant and the co-accused Shamshad, Dipak, Jahid @ Jaddu. The applicant had questioned the deceased for intervening in the said quarrel. An altercation had ensued between them. The applicant and above named accused left the spot in front of Sainath Dairy.

4. After a while, the applicant and above named co-accused and

other six persons returned to the said spot. Those persons were armed with sticks. Initially Shamshad attempted to give a blow by means of stick. The first informant Abdul Shah tried to defend the blow. The blow fell on the shoulder of the deceased. Dayaram Yadav came to their rescue. Shamshad tried to flee away. The deceased, the first informant, Vinod Vishakarma and Dayaram chased Shamshad. The deceased fell down.

5. Thereupon, the applicant and the co-accused allegedly assaulted the deceased by means of sticks. The first informant and others tried to save the deceased. However, the applicant and co-accused continued to unleash blows by means of respective weapons. After the deceased fell on the ground motionless, the applicant and co-accused Mujahid @ Mujju dragged the deceased on the road and co-accused Shamshad unleashed blows by means of sticks. Post completion of investigation, charge sheet was lodged.

6. The applicant was not sent for trial as the applicant could not be traced. The applicant came to be arrested on 6th February, 2022.

7. Mr. Jagtap, the learned counsel for the applicant, submitted that the applicant was very much available since the date of occurrence. It was submitted that in the intervening period the co-accused Mujahid Khan, Abdul Siddiqui @ Boiler, Shoeb Siddique, Shahid Khan, Mobin Khan and Jahid Khan have been released on

bail. The applicant is similarly circumstanced. Therefore, the applicant also deserves to be released on bail.

8. The learned APP resisted the prayer for bail. It was submitted that the role attributed to the applicant is distinct from that of the co-accused who have been released on bail. The applicant had assaulted the deceased even after he fell on the ground, motionless.

9. From the perusal of the material on record, it becomes evident that the applicant and the co-accused had allegedly formed an unlawful assembly and in prosecution of the common object of the unlawful assembly allegedly killed the deceased. The members of the unlawful assembly were allegedly armed with sticks. Having regard to nature of the injuries found on the person of the deceased, prima facie, it appears that the deceased met homicidal death.

10. I have perused the order passed by the Court of Session dated 28th August, 2018 whereby the co-accused Mujahid Khan was released on bail. Prima facie, the role attributed to Mujahid appears to be almost identical to that of the applicant. Allegedly the applicant and Mujahid Khan had dragged the deceased on the road and co-accused Shamshed unleashed blows by means of wooden stick. There does not seem much qualitative difference between the role attributed to the applicant and the co-accused Mujahid.

11. The learned APP further submitted that the fact that the

applicant made himself scarce for almost five years disentitles the applicant from the relief of bail.

12. In the charge-sheet initially lodged it was simply noted that the applicant could not be found. Learned APP fairly submitted that there is no material to indicate what steps were taken by the investigating agency to get the warrant or proclamation issued against the applicant. In the circumstances, the question as to whether the applicant was absconding becomes debatable.

13. In any event, a group of about 10 persons had allegedly assaulted the deceased by means of sticks, fist and kick blows. The co-accused who have been released on bail were also attributed the role of assault.

14. In the aforesaid view of the matter and the fact that it is unlikely that the trial can be concluded within a reasonable period, I am persuaded to exercise the discretion in favour of the applicant.

Hence, the following order.

ORDER

1] The application stands allowed.

2] The applicant be released on bail in C.R. No.410 of 2017 registered with Sakinaka 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 Sakinaka police station on the first Monday of every month in between 11 am to 1 pm till conclusion of the trial.

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] The applicant 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.

Application disposed.

(N. J. JAMADAR, J.)