



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3735 OF 2023**

Abid Isfaq Sheikh

... Applicant

versus

The State of Maharashtra

... Respondent

Mr. Ankit Takle with Mr. Aashish Shah, Mr. Tarsem Singh Gabbi, for Applicant.

Mrs. Geeta P. Mulekar, APP for State.

WPSI A.B.Kale, Kalwa Police Station present.

CORAM: N.J.JAMADAR, J.

DATE : 31 JANUARY 2024

P.C.

1. Heard the learned Counsel for the parties.
2. The applicant, who is arraigned in C.R.No.265 of 2022 registered with Kalwa Police Station for the offences punishable under Sections 302, 147, 143, 146, 147, 148, 149 read with Section 34 of the Indian Penal Code and Section 37(1) and 135 of the Maharashtra Police Act, has preferred this application to enlarge him on bail.
3. At the outset, learned Counsel for the applicant submits that the principal accused – Sarfarosh Siraj Ansari has been released on bail by an order dated 11 December 2023. The role attributed to the applicant is of relatively lessor degree. Therefore, the applicant deserves to be enlarged on bail.
4. In the order dated 11 December 2023, while releasing co-accused Sarfarosh Siraj Ansari on bail, this Court had, inter alia, observed as under :

“5. I have perused the injuries as reflected from the post mortem notes. The incident happened as the accused thought that the victim was the one who had stolen the mobile phone. The intention may not have been to kill the victim. These observations are prima facie in nature for consideration of the application. There are no criminal antecedents reported against the applicant. Considering the role of the present applicant and in the facts and circumstances of the present case, though the application is opposed by learned APP, I am inclined to enlarge the applicant on bail since the applicant is in custody for more than eighteen months with no possibility of the trial concluding any time soon. The investigation is complete and the chargesheet has been filed.”

5. I have perused the allegations in the FIR, the statements of two alleged eye witnesses, namely Amman Abdul Kuddus Shaikh and Suyash Shashikant Patole and the external injuries noted by the Autopsy Surgeon in the post mortem report. The gravamen of indictment against the applicant and the co-accused is that suspecting that the deceased – Farid had committed theft of mobile phone handset, the deceased was tied to a tree and the applicant and the co-accused took turns to beat him by means of stick, leather belt, fist and kick blows.

6. The learned APP fairly submitted that there is no difference between the role attributed to the applicant and the co-accused Sarfarosh, who has been ordered to be released on bail.

7. Indeed, there is no qualitative difference between the role attributed to the applicant and the co-accused Sarfarosh. I am, therefore, inclined to exercise discretion in favour of the applicant.

8. Hence, the following order :

ORDER

- (i) The Application stands allowed.
- (ii) The Applicant – Abid Isfaq Sheikh be released on bail in C.R.No.265 of 2022 registered with Kalwa Police Station on furnishing a PR bond in the sum of Rs.25,000/- and one or two sureties in the like amount to the satisfaction of the trial Court.
- (iii) The applicant is permitted to furnish cash security in the sum of Rs.25,000/- for a period of six weeks in lieu of surety.
- (iv) The applicant shall attend Kalwa Police Station, Thane on the first Monday of every month between 11.00 a.m. and 1.00 p.m.
- (v) The applicant 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. The applicant shall not tamper with prosecution evidence.
- (vi) On being released on bail, 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.
- (vii) The applicant shall attend the trial regularly. The applicant shall co-operate with the trial Court and shall not seek unnecessary adjournments.

(viii) The applicant shall surrender his passport, if any, to the Investigating Officer.

(ix) 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.)