

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 3820 OF 2022

Murtuza Khalil Khan	...	Applicant
Versus		
State of Maharashtra	...	Respondent

.....
Mr. Gaurav Bhawnani i/b Khan Abdul Wahab, for the Applicant.

Mr. A.A. Palkar, APP, for the Respondent-State.

.....

CORAM : PRITHVIRAJ K. CHAVAN, J.

DATED : 5th FEBRUARY, 2024.

P.C.

Heard learned Counsel for the applicant and the learned APP.

2 Arif, Murtuza and Tahir are the three brothers, who committed murder of Ahmed by means of sharp edged weapon on fateful night of 1st June, 2018 after the *Iftar*. The role attributed to accused Arif and present applicant- Murtuza, according to the learned Counsel of the applicant is identical, in the sense, both of them alleged to have assaulted the deceased by kick and fist blows. The main assailant Tahir is alleged to have inflicted blows of knife to the deceased. The deceased succumbed to the injuries.

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3 A crime was registered bearing No. 149 of 2018 with Deonar Police Station, Mumbai, for the offences punishable under Sections 302, 506(II) r/w 34 of the Indian Penal Code and Sections 37(1) r/w 135 of the Maharashtra Police Act.

4 It is submitted by the learned Counsel for the applicant that the fight ensued in a spur of moment without any premeditation. It is submitted that co-accused Arif has already been released on bail by this Court on 12th January, 2021.

5 It is pertinent to note that this Court by an order dated 25th October, 2021 permitted the Counsel to withdraw the application with liberty to apply afresh if charge is not framed within nine months from that date.

6 Learned Counsel for the applicant invites my attention to the roznama dated 1st October, 2022 of the City Civil and Sessions Court, Mumbai, which shows that the charge was framed on that day almost after one year. My attention is also invited to the rozanama dated 14th June, 2023, which depicts that the

examination-in-chief of the first witness has not yet been completed and it seems that the trial is going on with a snails pace.

7 The role attributed to the accused Arif and the applicant-Murtuza, as already stated, is only to the extent of inflicting kick and fist blows to the deceased. The deceased succumbed to the injuries immediately after he was taken to the hospital. The postmortem report further confirms the fact that the deceased succumbed to a single blow alleged to have been inflicted by accused Tahir, meaning thereby, there were no fatal blow inflicted by the present applicant. The cause of death was a single stab injury in the chest of the deceased.

8 Ever since his arrest on 17th October, 2018, the applicant is behind the bars for more than five years and having considered the fact of release of the co-accused on bail, I am not inclined to accept the submission of Mr. Palkar that directions be given to expedite the trial, looking to the pace with which the trial Court is proceeding despite directions to frame the charge within nine months from 25th October, 2021. Consequently, the following order is passed;

: O R D E R :

- (a) The application is allowed.
- (b) The applicant – Murtuza Khalil Khan be released on bail in Crime No.149 of 2018 registered with Deonar Police Station, Mumbai, on executing a PR bond in the sum of Rs.25,000/- with one or two sureties in the like amount to the satisfaction of the concerned Court.
- (c) The applicant shall attend the concerned Police Station on first Sunday of every month between 10:00 p.m. to 12:00 noon until conclusion of the trial.
- (d) 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 the Court or any Police Officer. The applicant shall not tamper with the evidence.

(e) The applicant shall furnish his place of residence and contact number to the concerned police station and the Court forthwith after his release. In case of any change, he shall forthwith inform to the police station and the Court.

(f) In case of breach of any of the conditions, liberty to the prosecution to apply for cancellation of his bail.

9 The observations made herein are *prima facie* only for the purpose of considering the application for bail and the trial Court shall not be influenced by the same while deciding the case on its own merits.

10 The application stands disposed of in the aforesaid terms.

[PRITHVIRAJ K. CHAVAN, J.]