

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 3933 OF 2023

Aamir Gous Shaikh @ Sonu ...Applicant
Versus
State of Maharashtra ...Respondent

Mr. Kalam Shaikh, a/w Ms. Sana Shaikh, for the Applicant.
Ms. Gauri Rao, APP for the State/Respondent.

CORAM: N. J. JAMADAR, J.
DATED: 18th APRIL, 2024

ORDER:-

1. Heard the learned Counsel for the parties.
2. The applicant, who is arraigned in CR No.133 of 2022 registered with Varsova Police Station, Mumbai, for the offences punishable under Sections 302, 141, 143, 144, 147, 148 and 149 of the Indian Penal Code, 1860 ("the Penal Code") has preferred this application to enlarge him on bail.
3. The indictment against the applicant and co-accused, who allegedly committed the murder of the deceased in prosecution of the common object of the unlawful assembly, runs as under:

On 18th March, 2022, Satish Naik, the injured and his friend Suraj Jhinjotiya (the deceased) were having drinks on

the road near the mangrove behind Saat Bungalow Bus Depot, Andheri. Co-accused Alam Shaikh, Safarul Shaikh and Abbasuddin Shaikh passed by the injured and the deceased. The latter demanded Safarul to give money to have liquor. Safarul declined. Thereupon the deceased abused Safarul and also pelted stone which hit the head of Safarul. After a while, Ravi Singh and Rohit Ughade passed the injured and the deceased. The latter demanded Ravi Singh to pay money to have liquor. Ravi Singh also declined and, thereupon, a quarrel ensued. Ravi Singh called Sonu Shaikh, the applicant, and Ashish Singh.

4. The prosecution alleges that the applicant and Ashish Singh came armed with wooden stick and plank. Ravi Singh caught hold of the deceased. The applicant assaulted the deceased by means of wooden stick and plank. Co-accused Alam, Safarul and Abbasuddin also returned to the scene of occurrence armed with bamboo. Those co-accused also assaulted the deceased. When Satish, the injured went to the rescue of the deceased, the injured was also assaulted by the accused. Eventually, the deceased succumbed to the injuries.

5. At the outset, the learned Counsel for the applicant, submitted that co-accused Alam Shaikh and Ravi Singh have been released on bail by this Court and on the count of parity, especially with Ravi Singh, the applicant is also entitled to be enlarged on bail. It was submitted that the role attributed to the applicant is, by and large, similar. In fact, there is no material to indicate that the deceased was the aggressor and had assaulted Safarul and Ravi Singh. The latter had sustained grievous injuries on account of assault perpetrated by the deceased and the injured.

6. As against this, Ms. Rao, the learned APP, submitted that the role attributed to the applicant is distinct from that of the co-accused, who have been released on bail. In fact, the applicant was the principal assailant. Satish Naik, the injured, has categorically stated that co-accused Ravi Singh had called his brother Ashish Singh and the applicant after a quarrel had broken out between the deceased and Ravi Singh. The applicant and Ashish Singh had assaulted the deceased by means of a stick and wooden plank. Therefore, the applicant is not entitled to claim parity.

7. I have perused the report under Section 173 of the Code of Criminal Procedure, 1973 ("the Code") and the documents

annexed with it. While releasing Alam Shaikh, this Court had observed, *inter alia*, as under:

6. A perusal of the postmortem report indicates that the deceased died on account of shock due to craniocerebral injury with multiple blunt injuries over the body. Medical officer further opined that the injuries sustained by the deceased were possible on account of assault by bamboo stick and wooden plank and those were sufficient in the ordinary course of nature to cause death.

7. It is pertinent to note that the applicant was not armed with any weapon. Secondly, it appears that the alternation ensued with both Safarul Shaikh and Ravi Singh as the deceased had demanded money from them and they refused and the deceased abused and assaulted them.

8. It prima facie appears that two groups of persons were antagonized with the aforesaid conduct of the deceased. Few members of both the groups were armed with sticks and wooden planks. In the circumstances, the question as to whether the applicant can be roped in by invoking section 149 of the Penal Code would warrant adjudication."

8. While releasing Ravi Singh also, the aforesaid reasons weighed with this Court.

9. It is true there are allegations against the applicant and Ashish Singh that they had assaulted the deceased by means of wooden stick and plank. However, it is necessary to note that the prosecution also alleges that the co-accused Safarul and Abbasuddin allegedly returned to the scene of occurrence armed with bamboo stick and assaulted the deceased by means of bamboo stick. Ashish Singh was also allegedly armed with a wooden plank.

10. As noted above, the deceased had raked up quarrel with two groups of persons. Few members of both the groups were armed with sticks and wooden plank. There is material to indicate that Ravi Singh had sustained injuries in the very same occurrence.

11. In the circumstances, whether the fatal injury allegedly sustained by the applicant over parital region which resulted in craniocerebral injury can be attributed to the assault perpetrated by the applicant would be a matter for adjudication at the trial. Undoubtedly, the offences were allegedly committed in prosecution of the common object of the unlawful assembly and, therefore, the overt act may not be of decisive significance. However, as noted above, there were two groups of assailants who joined together as the deceased had raked up quarrels with the members of the both the groups and even assaulted Safarul and Ravi Singh.

12. In the circumstances, the questions as to whether the members of both the groups were animated with the common object to commit the murder of the deceased or knew that the said offence was likely to be committed in prosecution of the common object of the assembly would be a matter for trial.

13. In the aforesaid view of the matter, I am persuaded to hold that a *prima facie* case for exercise of discretion is made out.

14. The applicant has been in custody since 19th March, 2022. Having regard to the nature of the occurrence and number of accused, it is unlikely that the trial can be concluded within a reasonable period. I am thus impelled to grant bail.

15. Hence the following order:

: O R D E R :

- (i) Application stands allowed.
- (ii) The applicant be released on bail in CR No.133 of 2023 registered with Varsova Police Station, on furnishing a P.R. Bond in the sum of Rs. 30,000/- with one or two sureties in the like amount.
- (iii) The applicant shall mark his presence at Varsova Police Station on the first Monday of every alternate month between 11.00 am. to 1.00 pm. till the conclusion of the trial.
- (iv) The applicant shall not tamper with the prosecution evidence. 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.

- (v) 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.
- (vi) The applicant shall regularly attend the proceedings before the jurisdictional Court.
- (vii) 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 stands disposed.

[N. J. JAMADAR, J.]