

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

CRIMINAL APPLICATION NO. 85 OF 2024

SHAIKH ISRAEL SHIAKH ALAUDDIN @
YUSU

...Applicant

Versus

SHAIKH IRFAN SHAIKH HUSSAIN @
GUDDU AND ORS.

...Respondents

Mr. J. D. Khairnar, for the Applicant.
Mr. Mahendra Sandhyanshiv, for Respondent Nos.1 to 4.
Mr. A. A. Naik, APP for the State/Respondent No.5.
PI Sanjay Sanap, Malegaon City Police Station, present.

CORAM: N. J. JAMADAR, J.
DATED: 15th JULY, 2024

PC:-

1. Heard the learned Counsel for the parties.
2. This is an application for cancellation of bail granted by the learned Additional Sessions Judge, Malegaon, District – Nashik in CR No.15/2024, registered at City Police Station, Malegaon, for the offences punishable under Sections 307, 323, 325, 379, 504, 506, 143, 144, 147, 148 and 149 of the Indian Penal Code, 1860 (“the Penal Code”) and Section 3 read with Section 25 of the Arms Act, 1959.
3. Mr. Khairnar, the learned Counsel for the applicant, submitted that the learned Additional Sessions Judge

committed an error in releasing the accused - respondents on bail after barely two months of their arrest. The learned Sessions Judge did not keep in view the principles which govern the grant of bail, especially the gravity of the offences. It was submitted that the first informant had sustained life threatening injuries. As the offence under Section 307 entails punishment, which may extend to imprisonment for 10 years or life imprisonment, the accused could not have been released on bail.

4. In opposition to this, Mr. Sandhyanshiv, the learned Counsel for the respondent Nos.1 to 4 – accused submitted that apart from respondent No.1 – Shaikh Irfan alias Guddu, the other respondents were not named in the FIR. In any event, the reasons ascribed by the learned Additional Sessions Judge while releasing the applicant on bail cannot be said to be perverse or wholly unconnected with the exercise of discretion to grant bail. Therefore, there is no reason to interfere with the order passed by the learned Additional Sessions Judge, submitted Mr. Sandhyanshiv.

5. I have perused the material on record including the allegations in the FIR. *Prima facie*, it appears that in the FIR Wakar Master and Guddu - respondent No.1, herein, were

named as the assailants alongwith three unknown assailants. It was alleged that at the instance of co-accused Akil Haji, the assailants had attempted to commit the murder of the applicant.

6. While releasing the respondents – accused on bail the learned Additional Sessions Judge observed, *inter alia*, as under:

“9. I had gone through the police papers. Prima facie, it can be said that police visited the spot and drawn the spot panchnama and collected copies of certain documents and recorded statement of witnesses. From the police papers and allegations in the FIR prima facie it can be said that there were business transaction between the applicants – accused and the informant and the informant filed suit for specific performance of contract in which the applicants – accused was also made a party. It seems that weapons, clothes and mobile phones are seized by police from the applicants – accused during investigation. Considering the allegations and material against applicants – accused, it can be said that practically investigation pertaining to applicants – accused is complete. Further custodial interrogation to applicants – accused is not necessary. It is settled law that bail is a rule and jail is an exception. Since 29.01.2023 the applicants – accused are in Jail. No purpose would be served in keeping the applicants – accused behind the bars as it will take time for police to file charge-sheet and for the commencement of trial.

10. The applicants – accused are having permanent residence. Nothing is produced to show that the applicants – accused are having criminal antecedents. They are ready to co-operate the I.O. for further investigating, if any. They are ready to abide terms and conditions of bail. So far as the objections raised by the Ld. APP for the State are concern, considering the nature of offence, punishment prescribed for the said offences and allegations against applicants – accused, care of it can be taken by imposing certain strict conditions on the applicants – accused. Therefore, it can be said that the applicants – accused are entitled for regular bail on certain strict conditions. As such, the application is to be allowed by imposing certain strict conditions.”

7. Evidently, the learned Additional Sessions Judge has ascribed justifiable reasons for exercising the discretion to grant bail. The learned Additional Sessions Judge has specifically observed that the investigation had reached an advanced stage and further detention of the accused was unwarranted.

8. It is trite an application for cancellation of bail stands on a different footing than rejection of bail at the initial stage. Very strong reasons are required to cancel the liberty secured by an order of bail. In the facts of the case, especially having regard to the reasons ascribed by the learned Additional Sessions Judge, I do not find any justifiable reason to cancel the bail granted to the respondents.

9. Hence, the application stands rejected.

[N. J. JAMADAR, J.]