

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 737 OF 2024**

Ali Ayyakannu Shaikh @ Murty	...	Applicant
vs.		
The State of Maharashtra	...	Respondent

**WITH
BAIL APPLICATION NO. 1151 OF 2024**

Mohammad Ali Sayyed @ Sameer	...	Applicant
vs.		
The State of Maharashtra	...	Respondent

**WITH
BAIL APPLICATION NO. 1192 OF 2024**

Zahid Ali Sayyed @ Salman	...	Applicant
vs.		
The State of Maharashtra	...	Respondent

Ms. Misbaah Solkar a/w. Ms. Faiza Gawandi for applicant in BA/737/2024.

Mr. R. M. H. Jabali, i/b. Mr. Pathan Shumayza Shukat Ali for applicants in BA/1151/2024 and BA/1192/2024.

Mr. Balraj B. Kulkarni, APP for respondent-State in BA/737/2024.

Mr. Kiran C. Shinde, APP for respondent-State in BA/1151/2024 and BA/1192/2024.

Mr. Umesh Karke, API, a/w. Mr. Gangawane, PC, Trombay Police Station, Mumbai.

**CORAM : MANISH PITALE, J.
DATE : 15th OCTOBER, 2024**

P.C. :

. Heard learned counsel for the applicants and the learned APPs for the respondent-State in these three applications arising out of the same FIR. In the present case, the FIR was registered on 17.11.2020 bearing No.332 of 2020 at Trombay Police Station, Mumbai. After completion of investigation and filing of chargesheet, the applicants alongwith other accused persons, are facing prosecution for offences under Sections 302, 504, 506, 427, 143, 144, 147, 148 and 149 of the Indian Penal Code, 1860 (IPC); Sections 4 and 25 of the Arms Act, 1959; Section 142 of the Maharashtra Police Act, 1951 and Sections 3(1), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act, 1999 (MCOC Act).

2. The FIR was registered on the statement of the informant, who is the aunt of the deceased. She has described the incident that occurred at 03:20 a.m. on 17.11.2020. It is alleged that when the deceased and one other person reached the shop of one of the co-accused persons and started banging the shutter, the accused persons, including the applicant, reached the spot and assaulted the victims, which included the deceased. Subsequently, a supplementary statement of the informant was recorded on 06.12.2020.

3. The investigation was completed and chargesheet was filed. The competent authority granted sanction for invoking the provisions of MCOC Act and pursuant thereto, the accused persons, including the applicant, are facing prosecution for the aforesaid offences. This Court is informed that on 16.04.2024, charges have been already framed in the present case.

4. The learned counsel appearing for the applicants in Bail Application Nos.1151 of 2024 and 1192 of 2024, submitted that the applicants could be granted relief, considering the order dated 22.12.2023 passed by this Court in Bail Application No.3693 of 2022, concerning co-accused No.4 Javed Abdul Karim Shaikh. It is submitted that the reasoning given in paragraph No.6 of the said order should inure to the benefit of the aforesaid applicants. Upon referring to the statement of the informant leading to registration of FIR, the learned counsel for the applicants submitted that although the names of the two applicants in the aforesaid applications have been mentioned in the said statement, including use of iron rod insofar as the applicant in Bail Application No.1192 of 2024 is concerned and use of wooden stick insofar as Bail Application No.1151 of 2024 is concerned, there is hardly any material on record to show as to which of the injuries were caused by the specific weapons allegedly used by the applicants. It is submitted that an omnibus allegation is made as regards presence of the applicants alongwith co-accused persons, being armed with different weapons and thereupon, the assault has been described in a generalised manner. It is submitted that while granting bail to co-accused No.4 Javed Abdul Karim Shaikh, this Court came to the conclusion that the said co-accused person could not be said to have carried a weapon, despite the fact that in the general and omnibus statement of the informant, leading to registration of FIR, it is stated that the named accused persons, including the said co-accused No.4 Javed Abdul Karim Shaikh, had reached the spot armed with weapons.

5. Thereupon, the learned counsel for the said applicants referred to the post-mortem report, particularly column No.17 thereof, to contend that although 15 injuries were stated, it was not clear as to which injury could

correspond to the use of which weapon by which accused person.

6. It was further submitted that the applicant in Bail Application No.1192 of 2024 has no criminal antecedents and therefore, he may be granted relief, as he has suffered incarceration from 17.11.2020 onwards. It is submitted that the prosecution intends to examine 56 witnesses, thereby indicating that there is hardly any possibility of the trial being completed within a reasonable period of time. It was further submitted that although the applicant in Bail Application No.1151 of 2024 has criminal antecedents, that in itself cannot be a factor to deny relief of bail, if this Court is convinced that the applicant has made out a case on merits. It is also submitted that invocation of provisions of the MCOC Act against the applicants can be said to be misplaced, as they have not been arraigned as accused with the alleged gang leader in any of the FIR, except the present case.

7. The learned counsel appearing for the applicant in Bail Application No.737 of 2024 sought relief on the ground of parity. It was submitted that in the first place, the said applicant was not named in the FIR. His name featured for the first time in the supplementary statement dated 06.12.2020 of the informant. It was submitted that a similarly placed co-accused person was granted relief of pre-arrest bail by Division Bench of this Court in a writ petition filed by the said co-accused person, challenging the invocation of provisions of MCOC Act. It was observed that the only overt act attributed to the said co-accused person was assault by way of fists and kicks and that too, in the supplementary statement recorded on 06.12.2020. It was submitted that therefore, on the ground of parity, this Court may consider granting relief to the said applicant.

8. The learned APPs submitted that the applicants in Bail Application Nos.1151 of 2024 and 1192 of 2024, do not deserve any indulgence. They have been specifically named in the statement leading to registration of FIR and specific overt acts have been attributed to them in the form of assault on the victim (deceased) by means of weapons. It is submitted that in the face of such material, particularly the post-mortem report, which records as many as 15 injuries suffered by the deceased, no indulgence can be shown to the said applicants.

9. It was submitted that there is no question of parity with co-accused No.4 Javed Abdul Karim Shaikh because the portion of the statement of the informant, describing the assault, does not attribute any specific overt act to the said co-accused person. It was highlighted that the applicant in Bail Application No.1151 of 2024 has six criminal antecedents, which include offences registered under the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) and also offences under Sections 380 and 390 of the IPC. On this basis, it was submitted that the bail applications of the said applicants deserve to be dismissed.

10. As regards Bail Application No.737 of 2024, it was conceded that the Division Bench of this Court, in a writ petition filed by the co-accused person, who can be said to be a similarly placed like that of the applicant herein, was granted relief of pre-arrest bail. It was submitted that the said applicant has as many as seven criminal antecedents and this aspect may be taken into consideration, while disposing of the application.

11. This Court has considered the rival submissions in the light of the material placed on record. As regards the applicants in Bail Application

Nos.1151 of 2024 and 1192 of 2024, this Court finds that the statement of the informant, leading to registration of FIR, specifically states about their presence at the date and time of the incident. The informant has stated that both the applicants reached the spot of the incident armed with weapons, one was armed with an iron rod and other with a wooden stick. It is specifically alleged that the deceased was assaulted by means of the aforesaid weapons by both the applicants. The post-mortem report shows as many as 15 injuries suffered by the deceased, including injuries on the vital part of the body i.e. his head. Column Nos.17 and 19 describe in detail as to the extent of injuries suffered by the deceased. The cause of death is mentioned as 'shock due to cranio-cerebral injury (unnatural)'.

12. The presence of the applicants is clearly stated alongwith description of the specific overt act of use of respective weapons, in order to assault the deceased. The aforesaid description of the incident itself demonstrates that the said applicants cannot claim parity with co-accused No.4 Javed Abdul Karim Shaikh, who was granted bail by order dated 22.12.2023 passed by this Court. A perusal of the statement of the informant shows that although the said co-accused No.4 is also named by the informant, when the actual description of the assault is given, no overt act is attributed to the said co-accused No.4, much less use of any weapon against the deceased. Therefore, the contention based on the ground of parity, is rejected.

13. As regards the other contention raised on behalf of the applicants that the description of the incident does not indicate as to which of the weapons caused injury on the vital parts of the body of the victim, suffice it to say that the informant has stated in sufficient detail about the presence of the aforesaid two applicants at the date and time of the incident, further

attributing specific use of weapons by each one of them and it is seen that the deceased had suffered injuries on vital parts of his body, as described in post-mortem report. At this stage itself, the applicants cannot claim any benefit on the basis that there could be some confusion as to the acts of which of the two applicants resulted in serious injuries to the vital parts of the body of the deceased, eventually causing his death.

14. Therefore, this Court is of the opinion that the applicants have failed to make out a *prima facie* case in their favour, for this Court to grant bail. The said applications deserve to be dismissed.

15. As regards Bail Application No.737 of 2024, this Court finds that a similarly placed co-accused person Shabhana Parveen Inayatullah Shaikh was granted relief of pre-arrest bail, when Writ Petition No.1959 of 2021 filed by her, was partly allowed and disposed of by the Division Bench of this Court. It was noted as regards the said co-accused person also that her name featured for the first time in the supplementary statement of the informant and the only role attributed to her was of having assaulted the deceased by fists and kicks.

16. The aforesaid applicant in Bail Application No.737 of 2024 can claim relief on the ground of parity, for the reason that his name did not feature in the statement that led to registration of FIR on 17.11.2020. It was only in the supplementary statement dated 06.12.2020, that his name was specifically taken by the informant. But, the only role attributed to the applicant in the supplementary statement was that of assaulting the victim by fists and kicks. Therefore, the principle of parity would inure to the benefit of the said applicant.

17. The learned APP has highlighted the fact that the aforesaid applicant has seven criminal antecedents for various offences, including offence under Section 380 of the IPC as also offences under the NDPS Act. But, the learned counsel for the applicant has correctly pointed out that in the facts pertaining to the aforesaid applicant, it can be *prima facie* said that invocation of provisions of MCOC Act may not be sustainable. In the first place, the name of the applicant has not featured in any FIR alongwith the alleged gang leader, other than the subject FIR. The applicant was not named in the statement leading to FIR on 17.11.2020 and his name came to fore only on 06.12.2020 in the supplementary statement of the informant. Initially, when the provisions of the MCOC Act were invoked, the applicant was not even arraigned as accused and it is only in February, 2021 that the provisions of MCOC Act were invoked against the applicant. In that sense, the applicant has made out a *prima facie* case for granting bail and hence, the application of the said applicant deserves to be allowed.

18. In view of the above, Bail Application Nos.1151 of 2024 and 1192 of 2024 are dismissed and Bail Application No.737 of 2024 is disposed of as follows:

- (i) The applicant Ali Ayyakannu Shaikh @ Murty shall be released on bail in connection with FIR No.332 of 2020 dated 17.11.2020, registered at Trombay Police Station, Mumbai, on furnishing PR Bond of ₹ 50,000/- and one or two sureties in the like amount to the satisfaction of the trial Court.
- (ii) The applicant, upon being released on bail, shall report to Trombay Police Station, Mumbai on first Monday of every month between 10:00 a.m. and 12:00 noon during the pendency of trial.

- (iii) Upon release, within one week, the applicant shall inform the Investigating Officer as well as the trial court about his contact number and residential address and update the same in case of any change.
- (iv) The applicant shall co-operate with the trial Court in completing the proceedings expeditiously and attend the proceedings before the trial Court on each and every date, unless specifically exempted.
- (v) The applicant shall not tamper with the evidence of the prosecution in any manner. He shall not undertake any action that may influence the informant, witnesses and other persons concerned with the case.

19. The said applicant shall be liable to face proceedings for cancellation of bail, in the event any of the aforesaid conditions are violated.

20. It is also clarified that the observations made in this order are limited to the disposal of the present application and the trial court shall proceed further in the matter without being influenced by the observations made hereinabove.

21. Since charges have been already framed in the present case on 16.04.2024, the concerned Court shall expedite the trial.

22. The applications are disposed of.

(MANISH PITALE, J)

Priya Kambli