

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 1697 OF 2024**

Namra @ Shifa Akbarullah Khan		
ShahinBanu @ Halima Akbarullah Khan		
Almas Akbarullah Khan	...	Applicants
vs.		
The State of Maharashtra	...	Respondent

**WITH
INTERIM APPLICATION NO. 2669 OF 2024
WITH
INTERIM APPLICATION NO. 1762 OF 2024
IN
BAIL APPLICATION NO. 1697 OF 2024**

ALONGWITH

BAIL APPLICATION NO. 1245 OF 2024

Fazal Abdul Karim Idrisi		
vs.		
The State of Maharashtra	...	Respondent

**WITH
INTERIM APPLICATION NO. 1360 OF 2024
IN
BAIL APPLICATION NO. 1245 OF 2024**

ALONGWITH

BAIL APPLICATION NO. 1396 OF 2024

Halim Mohammed Hanif Khan		
vs.		
The State of Maharashtra	...	Respondent

**WITH
INTERIM APPLICATION NO. 1708 OF 2024
IN
BAIL APPLICATION NO. 1396 OF 2024**

Mr. Shubham Upadhyay a/w. Mr. Fahad Qureshi for applicant in BA/1697/24.

Mr. Fazal Idrish a/w. Mr. Amrish Salunke for applicant in BA/1245/24.

Mr. Niranjana Mundargi a/w. Ms. Keral Mehta for applicant in BA/1396/24.

Mr. Prasanna Malshe, APP for respondent-State in all bail applications.

Mr. Jitendra R. Gautam a/w. Ms. Poonam Pal for applicant in IA/2669/24 and IA/1762/24 in BA/1697/24, IA/1360/24 in BA/1245/24 and IA/1708/24 in BA/1396/24.

Mr. Sunil Ramkar, PSI, Chunabhatti Police Station, Mumbai.

CORAM : MANISH PITALE, J.

DATE : 26th JULY, 2024

P.C. :

. Heard learned counsel for the applicants, the learned APP appearing for the respondent-State as well as the learned counsel for the first informant.

2. In these three bail applications, accused Nos.1, 3, 4, 5 and 7 are before this Court seeking bail in connection with FIR No.0371 of 2023 dated 27.08.2023 registered at Chunabhatti Police Station, Mumbai for offences under Sections 302, 307, 326, 324, 323 and 341 of the Indian Penal Code, 1860 (IPC) as also the provisions of the Arms Act, 1959.

3. By an order dated 21.06.2024 passed in Bail Application No.2244 of 2024 (**Muzammil @ Jishan Waris Khan vs. State of Maharashtra**), this Court granted bail to accused No.8. Although the aforesaid order was sought to be relied upon by the learned counsel for the applicants, the learned APP

submitted that the role of the present applicants before this Court is distinguishable from that of accused No.8 and therefore, there is no question of parity.

4. In this backdrop, this Court has heard the learned counsel for the applicants, learned APP for the State and the learned counsel for the first informant, in the context of the specific role attributed to each applicant accused person.

5. It would be appropriate to refer to the statement of the informant, which led to registration of FIR on 27.08.2023. As per the said statement, on 26.08.2023 at about 10:00 p.m., the incident occurred wherein two persons suffered injuries and one person died due to severe injuries suffered as a result of the assault launched on the victims by the accused persons. The statement of the informant describes as to the manner in which the assault took place, the presence of the accused persons and the role attributed to them. This Court has perused the supplementary statement of the informant as well as the statements of the eye-witnesses, including the injured eye-witnesses.

6. As regards accused No.1 Halim Mohammed Hanif Khan, who is applicant in Bail Application No.1396 of 2024, this Court finds that neither the statement of the informant leading to registration of FIR, nor his supplementary statement and not even the statements of the eye-witnesses, indicate the presence of the said applicant accused No.1 at the place and time of the incident, which occurred on 26.08.2023. The aforesaid statements have indeed alleged that the said applicant accused No.1 had been spreading false news about the victims being persons involved in illegal

trade of beef and thereafter, it is further alleged that the said applicant accused No.1 arranged for the weapons that were used in the assault launched upon the victims.

7. This Court is of the opinion that the actions attributed to the applicant accused No.1 with regard to spreading false news about the victims and others, is irrelevant insofar as the incident and the assault in question are concerned. As regards the aspect of supply of arms, other than the statement of the informant and statements of certain witnesses that they had heard that the applicant accused No.1 was helping other accused persons to prepare for the assault, there is hardly any other material on record with the chargesheet to support the said assertion. Considering the bad blood and enmity between the victims and the applicant accused No.1, with regard to the alleged actions of spreading false news about them, the allegation regarding supply of weapons for the assault has to be appreciated in that light and this Court finds absence of independent material at present, to support such an allegation. Therefore, the said applicant has made out a case in his favour.

8. As regards the criminal antecedents of the applicant accused No.1, it is brought to the notice of this Court that 'B' summary was filed in C.R. No.226 of 2021. The other antecedents pertain to C.R. No.35 of 2022 registered for offences under Sections 324, 504 and 506 of the IPC as also C.R. No.119 of 2022 pertaining to offences under Sections 307, 324 and other provisions of the IPC. It is to be noted that in the documents filed alongwith the chargesheet, there is no reference to C.R. No.119 of 2022. Even otherwise, this Court is of the opinion that when there is absence of material to directly link the applicant accused No.1 with the incident in question in the present case, merely because he has certain criminal antecedents, cannot be a

ground to reject his application.

9. As regards accused No.3 Fazal Abdul Karim Idrisi, who is applicant in Bail Application No.1245 of 2024, this Court has perused the statement of the informant, his supplementary statement and the statements of the eye-witnesses. It is significant to note that in the statement of the informant, leading to registration of FIR dated 27.08.2023, the only overt act attributed to the said applicant is that he alongwith others, surrounded the victim and assaulted him with fists and kicks. There is no reference to the said applicant accused No.3 being armed with a knife. But, it is in the supplementary statement recorded on 28.08.2023 of the informant as also the statement of the injured eye-witness Anas Shaikh recorded on 28.08.2023 and also the statement of the other injured eye-witness Jian Ali Qureshi dated 03.09.2023 that for the first time, it is alleged that even the said applicant accused No.3 was armed with a knife and he assaulted injured eye-witness Anas by means of the said knife. Although this Court is conscious of the fact that the statement leading to registration of FIR need not be an encyclopedia, but a marked difference in the role attributed to the applicant accused No.3 in the statement of the informant leading to registration of FIR, as compared to his supplementary statement and the statements of the injured eye-witnesses recorded later, does indicate that the applicant accused No.3 has made out a *prima facie* case in his favour. There are no criminal antecedents against the said applicant accused No.3 and therefore, this Court is inclined to allow his application, subject to stringent conditions being imposed upon him.

10. As regards the applicant accused No.4 ShahinBanu @ Halima Akbarullah Khan, applicant accused No.5 Namra @ Shifa Akbarullah Khan

and applicant accused No.7 Almas Akbarullah Khan in Bail Application No.1697 of 2024, this Court has perused the material on record to ascertain the role attributed to them.

11. It is significant to note that in the statement of the informant as well his supplementary statement and the statements of the injured eye-witnesses, accused No.7 Almas Akbarullah Khan has not been named at all. There is no question of any overt act being attributed to him as regards the specific incident of assault that is said to have taken place on 26.08.2023. But, since it is brought to the notice of this Court that there was an order of externment dated 21.02.2023 passed against the said applicant, wherein it was recorded that there are at least four other criminal cases pending against him, this Court is inclined to impose appropriate conditions, while granting bail to the said applicant.

12. As regards applicant accused No.4 ShahinBanu @ Halima Akbarullah Khan and applicant accused No.5 Namra @ Shifa Akbarullah Khan, this Court finds that the only role attributed to these two applicants, who are women, is that they were present at the time of the incident and they alongwith other accused persons, surrounded the victim and assaulted him with fists and kicks. Considering the role attributed to the said accused Nos.4 and 5 and further considering that they are women who have no criminal antecedents, this Court is inclined to allow their prayer for bail.

13. This Court also takes note of the fact that accused Nos.1 and 3 were arrested on 27.08.2023, accused Nos.4 and 5 were arrested on 28.08.2023 and accused No.7 was arrested on 28.10.2023, which indicates that the said applicant accused persons have already suffered incarceration of about 11

months, except accused No.7, who has suffered incarceration for about 9 months.

14. In view of the above, the applications are allowed in the following terms:

- (i) The applicants in these applications i.e. applicant accused No.1 Halim Mohammed Hanif Khan, applicant accused No.3 Fazal Abdul Karim Idrisi, applicant accused No.4 ShahinBanu @ Halima Akbarullah Khan, applicant accused No.5 Namra @ Shifa Akbarullah Khan and applicant accused No.7 Almas Akbarullah Khan, shall be released on bail in connection with FIR No.0371 of 2023 dated 27.08.2023 registered at Chunabhatti Police Station, Mumbai on furnishing PR Bonds of ₹ 50,000/- each with one or two sureties in the like amount to the satisfaction of the trial Court;
- (ii) insofar as the applicant accused No.4 ShahinBanu @ Halima Akbarullah Khan, applicant accused No.5 Namra @ Shifa Akbarullah Khan and applicant accused No.7 Almas Akbarullah Khan, are concerned, since they are from the same family and are related to each other, same person may stand surety to the said accused persons;
- (iii) the applicant accused No.3 Fazal Abdul Karim Idrisi and applicant accused No.7 Almas Akbarullah Khan shall not enter the jurisdiction of Chunabhatti police station during the pendency of the trial;
- (iv) the applicant accused No.3 Fazal Abdul Karim Idrisi and applicant accused No.7 Almas Akbarullah Khan shall report to the local police station having jurisdiction of the place where they reside, on 2nd and 4th Monday of every month between 10:00 a.m. and 12:00 noon. The said applicants shall inform the trial court about their place of residence and the police station to which they would be reporting, within two weeks of their release on bail;

- (v) upon release, within one week, all the applicants shall inform the Investigating Officer as well as the trial court about their contact numbers and residential addresses and update the same in case of any change;
- (vi) the applicants shall not tamper with the evidence of the prosecution in any manner. They shall not influence the informant, witnesses and other persons concerned with the case;
- (vii) the applicants 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;

15. In the event, the applicants violate any of the conditions specified in this order, it shall be liable to be cancelled.

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

17. The applications stand disposed of.

18. In view of disposal of bail applications, the interim applications therein also stand disposed of.

(MANISH PITALE, J)