

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

BAIL APPLICATION NO. 2729 OF 2024

Muzammil @ Jishan Waris Khan	...	Applicant
Versus		
The State of Maharashtra	...	Respondent

Ms. Heena Mushtaq Ahmed for the Applicant.
Mr. Tanveer Khan, APP for Respondent-State.

**CORAM: MANISH PITALE, J.
DATE : 25th JULY 2024**

P.C. :

. Heard learned counsel for the applicant and learned APP for respondent-State.

2. The applicant was arrested on 19th October 2023 in connection with FIR No. 0448 of 2023 dated 15th October 2023 registered at Chunabhatti Police Station, Mumbai, for offences under Sections 307, 326, 341, 323, 504, 506(2), 109, 212 read with 34 of the Indian Penal Code, 1860 (IPC) and Sections 142 and 37(1)(a) read with 135 of the Mumbai Police Act.

3. As per the statement of the informant, on 15th October 2023, he was assaulted by three accused persons by means of razor, knife and blade. The applicant is specifically named as one of the persons who carried out the assault. Investigation was completed and charge-sheet was filed in the present case.

4. The learned counsel for the applicant submits that although the applicant is named by the informant, if injury certificate and the medical papers are taken into consideration, only simple injuries were inflicted upon the informant. It is submitted that there is discrepancy as regards the actual time of the incident in question as described in the statement of the informant that led to registration of the FIR and the history recorded when the medical papers were prepared.

5. It is further submitted that co-accused persons have been granted bail and since, the applicant has remained behind bars from 19th October 2023, this Court may consider allowing the present application.

6. Attention of this Court is invited to the orders passed by the Sessions Court granting bail to the co-accused persons, as also orders passed by this Court, whereby bail was granted to some of the co-accused persons.

7. On the other hand, the learned APP submits that the applicant cannot claim parity because the bail granted to the co-accused persons was on the basis of the specific role attributed to them, which is distinguishable from the role of the applicant. It is submitted that the informant has specifically named the applicant and also described the overt act, which led to injuries on the body of the informant. It is submitted that the applicant has criminal antecedents and that when the incident occurred, he was externed

for a period of one year as per order dated 21st February 2023 passed by the Competent Authority. On this basis, the learned APP opposed the present application.

8. This Court has considered the rival submissions in the light of the material available on record. A perusal of the statement of the informant, leading to registration of the FIR, shows that the incident of assault has been described in detail. Specific role is attributed to the applicant, who is said to have assaulted the informant by way of a razor. It is alleged that the applicant assaulted by means of razor and intended to attack the neck of the informant, but when the informant tried to avoid the blow, it eventually landed on the side of his neck and on the right shoulder.

9. A perusal of the injury certificate shows that the informant did suffer injuries, on the right side of his neck and on the left flank, apart from other injuries. The informant was medically examined on the very date of the incident, immediately after the assault and the medical papers pertaining thereto, show the fact that the informant did suffer injuries on the side of his neck and shoulder. This tallies with the description of the assault and the specific role attributed by the informant to the applicant. This Court is also informed that weapon of assault was recovered at the behest of the applicant.

10. In such circumstances, merely fact that the injury certificate

records the nature of the injuries as simple, cannot come to the aid of the applicant.

11. The contentions regarding parity raised on behalf of the applicant can also not be accepted, for the reason that the orders granting bail to the co-accused persons, took into consideration the specific role attributed to each of them. For instance, in the case of accused Almas Akbarullah Khan, the Sessions Court took note of the fact that the only role attributed to the said accused person was that he had given shelter to the other accused persons. As regards accused Sameer Abdul Aziz Qureshi, the Sessions Court specifically recorded that while the allegation against the said accused person was that he had assaulted by means of knife on the stomach and caused grievous injury to the applicant, no such injury was found in the injury certificate. Such is not the case with the present applicant, since this Court has noted herein above, the nature of injuries suffered, which tally with the role attributed to the applicant in the present case.

12. Apart from the aforesaid factors, it is relevant to note that the applicant has criminal antecedents, there are as many as 5 other cases registered in the very same Police Station against the applicant between the years 2019 and 2022. One such case involves serious offence under Section 307 of the IPC. The order dated 21st February 2023 passed by the Competent Authority, shows that the applicant was externed for a period of one year. Yet, he appears to have violated the said order and assaulted the

informant on 15th October 2023, during the currency of the order of externment.

13. In view of the above, no case is made out for granting bail. The application is rejected.

14. The trial Court shall make efforts to frame the charges at the earliest, so that the trial is expedited.

MANISH PITALE, J.