

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3658 OF 2024

Sumran Mohd. Hanif Shaikh @ Akhtar	...Applicant
vs.	
The State of Maharashtra	...Respondent

Mr. Yash Arora a/w. Mr. Vishal Bhogle, Ms. Harshita Nag, for the Applicant.

Mr. H.J. Dedhia, APP, for the Respondent/State.

Ms. Nandini Fernandes (through Legal Aid), for Respondent No. 2.

CORAM : N. J. JAMADAR, J.

DATE : DECEMBER 16, 2024

P.C.:

1. Heard the learned counsel for the parties.
2. The applicant, who is arraigned in C.R. No. 630 of 2022 registered with Trombay police station for the offences punishable under sections 302, 307, 326, 324, 354, 141, 143, 147, 149, 323, 504 and 506(2) of Indian Penal Code, 1860; sections 8 and 12 of Protection of Children from Sexual Offences Act, 2012; sections 4 read with 25 and 27 of Arms Act, 1959 and section 37(1)(a) read with 135 of Maharashtra Police Act, 1951 has preferred this application for bail.
3. At the outset, Mr. Yash Arora, the learned counsel for the applicant submitted that this Court has released five co-accused on bail and the applicant is entitled to the same dispensation on the ground of parity. Mr. Arora, placed particular reliance on the order

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dated 22nd October, 2024 passed in Bail Application No. 3640 of 2024 (Rafiyah Mohd. Hanif Shaikh @ Afridi v. the State of Maharashtra and Anr.) whereby the said co-accused came to be enlarged on bail. It was submitted that the role attributed to the applicant is almost identical to that of Rafiyah Mohd. Shaikh.

4. Mr. Dedhia, the learned APP opposed the prayer for bail. It was urged that though there is inconsistency in the statements of witnesses as regards the particular weapon with which the applicant was armed, yet, there is material to show that the applicant was a member of the unlawful assembly in prosecution of the common object of which the deceased was killed and also participated in the assault on the deceased and the injured witnesses. Therefore, the applicant does not deserve to be enlarged on bail.

5. While releasing the co-accused Mohd. Rafiq Abdul Jabbar Shaikh and another in Bail Application No. 1482 of 2023, this Court had considered in a little detail the prosecution case and the reasons which weighed with this Court in enlarging those applicants on bail. It was, inter alia, observed as under:-

20] Prima facie, there is discrepancy regarding identity of the persons and the weapons by means of which the deceased was assaulted. Indeed the deceased had sustained multiple injuries on his head. However, the prosecution witnesses have attributed the role of assault by means of fist, sticks and sword to a number of the assailants. Mustafa has not stated that Rafiq

had assaulted him by means of an iron rod, the role which was attributed to Rafiq by the first informant. Instead Mustafa stated that Akhtar assaulted him by a baseball stick and Afridi by means of sword. In fact, Mustafa did not attribute any role of assault by the applicant Rafiq to him. However, Mustafa attributed assault by the applicant and other persons to his father Hasim.

21] As it was a case of a free fight, between two groups of persons and in the said free fight members of both the groups sustained injuries, as is evident from the injury certificates of the applicant Rafiq and the co-accused and other members of the accused party, the version which Rafiq narrated in the cross FIR can be said to competing in probability with that of first informant. In these circumstances which of the parties was the aggressor would be a matter for adjudication at the trial.

6. While releasing Rafiyan Mohd. Shaikh @ Afridi, (Bail Application No. 3640 of 2024) by an order dated 22nd October, 2024 also, the inconsistency in the statements of the witnesses as regards the weapons, the said co-accused was armed with, and the person to whom the said co-accused allegedly assaulted, weighed with this Court.

7. Qua the applicant also, there is inconsistency in the statements of the witnesses. Mohd. Mustafa Pathan, the injured witness and son of the deceased has stated that the applicant assaulted his father by a weapon like a baseball stick. Mohd. Hussain Pathan, another injured, alleged that his father was assaulted by the applicant, Rafiyan @ Afridi, Modh. Rafiq and Saizaan Sayyed, who have been released on bail, and other co-

accused, by means of fists kick blows and sword. Another witness/victim, alleged that the applicant and Rafiyan @ Afridi were armed with sword.

8. Prima facie, the reasons which weighed with this Court in releasing the co-accused, especially Rafiyan @ Afridi, apply with equal force to the claim of the applicant for bail.

9. Ms. Fernandes, learned counsel appointed to espouse the cause of respondent No. 2, fairly submitted that the applicant was not accused of having subjected the victim to sexual exploitation and that the principle of parity may apply in view of the release of Rafiyan @ Afridi, on bail.

10. For the foregoing reasons and the facts that the applicant has been in custody for almost two years and having regard to the nature of the occurrence, the number of accused involved, number of witnesses, which the prosecution may be required to examine in both the cases, and the large pendency of the cases, it is extremely unlikely that the trial can be concluded within a reasonable period, I am persuaded to exercise the discretion in favour of the applicant.

Hence, the following order.

ORDER

1] The application stands allowed.

- 2] The applicant be released on bail in C.R. No. 630 of 2022 registered with Trombay police station, on furnishing a P.R. Bond of Rs. 30,000/- with one or more sureties in the like amount, each.
- 3] The applicant shall mark his presence at Trombay police station on the first Monday of every month between 11 am to 1 pm for a period of three years or till conclusion of the trial, whichever is earlier.
- 4] The applicant shall not enter the limits of Trombay police station till the conclusion of the trial except for the purpose of marking presence at Trombay police station.
- 5] The applicant shall not tamper with the prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses or any person acquainted with the facts of the case.
- 6] 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.
- 7] The applicant shall regularly attend the proceedings before the jurisdictional Court.
- 8] 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 disposed.

(N. J. JAMADAR, J.)