

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3926 OF 2024

Mohd. Kasim Kalamuddin Khan ... Applicant
Vs.
State of Maharashtra ... Respondent

Mr. Ravishankar Dwivedi a/w. Mr. Durgesh Pandey and Mr. Satish Shukla for Applicant.

Mr. Tanveer G. Khan, APP for Respondent-State.

Mr. G. N. Gaikwad, PSI, Dharavi Police Station.

CORAM : MANISH PITALE, J.
DATE : NOVEMBER 12, 2024

P.C. :

. Heard Mr. Dwivedi, learned counsel for the applicant and Mr.Khan, learned APP for the respondent-State.

2. The applicant (accused No.8) is seeking bail as he was arrested in connection with FIR No.265 of 2020 dated 27.06.2020 registered with Dharavi Police Station, Mumbai, for offences under Sections 143, 144, 147, 148, 149, 307, 323, 324 and 326 of the Indian Penal Code, 1860 (IPC), as also Sections 4 and 25 of the Arms Act, 1959 read with Section 37(1)(a) of the Maharashtra Police Act. Thereafter, offence under Section 302 of the IPC was also added. The applicant was arrested on 11.07.2022 and upon completion of investigation, charge-sheet was filed.

3. The learned counsel for the applicant submits that in the present case, although the informant has mentioned the name of the applicant amongst other accused present on the date and time of the incident and one of the eyewitnesses has also given the name of the applicant, no specific overt act is attributed to the applicant.

4. It is submitted that although the investigating authority claims that a chopper was recovered at the behest of the applicant, a perusal of the memorandum executed under Section 27 of the Indian Evidence Act, 1872 (Evidence Act) in respect of the applicant would show that there were no blood stains found on the said chopper and that blood stains were not found even on the clothes of the applicant recovered during the course of the investigation.

5. It is further emphasized that the applicant has remained incarcerated for four years and four months and even the charge has not been framed, while the prosecution intends to examine as many as 35 witnesses.

6. On the other hand, the learned APP submits that the informant has clearly mentioned the name of the applicant as one of the assailants. One of the eyewitnesses has also mentioned the name of the applicant and since his presence is established beyond doubt and the provisions pertaining to unlawful assembly have been invoked in the present case, this Court may not show any indulgence to the applicant.

7. This Court has considered the rival submissions in the light of the material produced on record. The application deserves to be allowed for the following reasons:-

- a. A perusal of the statement leading to registration of the FIR shows that while the name of the applicant has been mentioned as one of the persons present at the time of the incident, specific overt act has not been attributed to the applicant. A general statement is made that after the main accused person assaulted the deceased and the informant, others present at the spot also assaulted the deceased. There is no reference to any weapon in the hand of the applicant at the

time of the incident;

- b. *Prima facie*, the fatal blow to the deceased appears to have been given by the co-accused Furkan Qureshi by means of a knife;
- c. Several eyewitnesses have given their statements with regard to the said incident, but none of the eyewitnesses, except one, have mentioned the name of the applicant as one of the assailants present at the time of the incident. The lone eyewitness, who has taken the name of the applicant, has generally mentioned the presence of the applicant, without attributing any specific overt act to him during the course of the incident;
- d. The memorandum executed under Section 27 of the Evidence Act as regards the applicant shows recovery of clothes of the applicant and also one chopper. But it is significant to note that neither the clothes nor the chopper are shown as having any blood stains;
- e. The applicant has already suffered incarceration for the period of four years and four months and charge is yet to be framed, while the prosecution intends to examine as many as 35 witnesses.

8. For the aforesaid reasons, the application is allowed in the following terms:-

- (A) The applicant shall be released on bail in connection with in connection with FIR No.265 of 2020 dated 27.06.2020 registered at Dharavi Police Station, Mumbai, on furnishing P.R. Bond of Rs.50,000/- with one or two sureties in the like amount to the satisfaction of the trial Court;

- (B) The applicant shall appear before the trial Court, except when exempted for the reasons to be recorded in writing. He shall cooperate with the trial Court for expeditious disposal of the trial;
- (C) The applicant shall not tamper with the evidence of the prosecution. He shall not influence the informant, witnesses or any other person concerned with the case;
- (D) Upon being released on bail, the applicant shall immediately, and in any case within a week, furnish the details of his active mobile number and residential address to the trial Court and update about the same, if there is any change.

9. Needless to say, violation of any of the aforesaid conditions would make the applicant liable to face proceedings for cancellation of bail. It is also clarified that the observations made in this order are limited to the question of grant of bail to the applicant in the present application and that the trial Court shall proceed further, without being influenced by the observations made in this order.

10. The bail application stands disposed of accordingly.

(MANISH PITALE, J.)

Minal Parab