

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 2909 OF 2024**

Amir Aslam Qureshi	...	Applicant
vs.		
The State of Maharashtra	...	Respondent

**WITH
INTERIM APPLICATION NO. 3183 OF 2024
IN
BAIL APPLICATION NO. 2909 OF 2024**

Mr. Husen Shaikh a/w. Mr. Rumman Shaikh for applicant.

Mr. Balraj B. Kulkarni, APP for respondent-State.

Mr. Satyaram Radheshyam Gaud a/w. Mr. Shikhari Shah and Mr. Maniram R. Gaud for applicant in IA/3183/24.

Mr. Liladhar Patil, PI, R.A.K. Marg Police Station, Mumbai.

**CORAM : MANISH PITALE, J.
DATE : 10th SEPTEMBER, 2024**

P.C. :

. Heard learned counsel for the applicant, the learned APP for the respondent-State and the learned counsel appearing for the intervenor (first informant).

2. The applicant was arrested on 21.03.2024 in connection with FIR No.0134 of 2024 registered on the said date at R.A.K. Marg Police Station, Mumbai, for offences under Sections 307, 504, 506, 143, 147, 148 and 149 of the Indian Penal Code, 1860 (IPC). Subsequently, the victim died and hence, offence under Section 302 of the IPC was added. The applicant has remained behind bars since 21.03.2024.

3. At the outset, the learned counsel for the applicant submits that bail may be granted to the applicant herein as the he claims parity with co-accused Junaid Mukhtar Shaikh, who was granted bail by order dated 02.08.2024 in Bail Application No.2886 of 2024 (Junaid Mukhtar Shaikh vs. The State of Maharashtra). It is submitted that the reasons recorded in the said order, while granting bail to the said co-accused person, equally apply to the applicant herein and therefore, bail may be granted. It is emphasized that the applicant is merely named as one of the persons present with the co-accused person at the date and time of the incident. Neither any overt act is attributed, nor any weapon is found in his hands. It is also brought to the notice of this Court that while the informant and the two witnesses have named the applicant as one of the persons present at the date and time of the incident, there are two other witnesses, claiming to be eye-witnesses, who have not named the applicant as being present at the date and time of incident.

4. The learned APP on the other hand, submitted that the presence of the applicant is enough, since provisions pertaining to unlawful assembly are invoked in the present case. It is submitted that the informant and some of the other eye-witnesses have recorded presence of the applicant at the date and time of the incident and therefore, bail may not be granted.

5. The learned counsel appearing for the intervenor (first informant) supported the submissions made by the learned APP and further submitted that the description of the incident, as given by the informant, indicates that the accused “Zahir Qureshi alongwith others” restrained the victim, while the co-accused persons assaulted him by means of knife, which resulted in his death. It is submitted that the aforesaid allegation is enough to indicate the

involvement of the applicant in the present case.

6. A perusal of the order dated 02.08.2024 passed in Bail Application No.2886 of 2024 in the case of Junaid Mukhtar Shaikh, shows that this Court allowed the bail application, for the reasons recorded in paragraph No.8 of the said order, which reads as follows:

“8. Having heard the learned counsel for the applicant and learned APP, this Court is inclined to allow the present application for the following reasons:

- (a) The statement of the informant does name the applicant along with other accused persons. But, other than taking the name of the applicant, no overt act is attributed to him. It is not even alleged that the applicant was armed with any weapon. The statements of the other eye witnesses who are related to the victim have also taken only the name of the applicant, as one of the persons present at the time of the incident.
- (b) There are two persons who claim to be eye witnesses and who could be said to be independent witnesses and both these witnesses have not even named the applicant as the person present at the time of the incident. In such cases, where violence is inflicted in the neighborhood, it is quite possible that there would be persons other than the accused persons present at the spot of the incident who have no involvement in the incident in question, but their presence gets recorded in the statements of witnesses and the informant. Therefore, an overt act being attributed or accused being armed with weapon at the time of the incident become significant factor.
- (c) The applicant has no criminal antecedents and he at the time of the incident was working with a private company as he is holding diploma in Information Technology. At this stage, this Court is not inclined to

go into the documents, indicating the claim of the applicant that he had logged in for working from home, but such material can be said to be ancillary material, which supports the claim of the applicant of not being involved in the incident in question.”

7. This Court has perused the material on record, particularly the statement of the informant and the alleged eye-witnesses. The aforesaid material does indicate that the applicant herein can be said to be identically placed as co-accused Junaid Mukhtar Shaikh, for the reason that the informant and the two eye-witnesses have only recorded his presence with no overt act being attributed to him, while two other witnesses have not even named the applicant, as regards his presence at the date and time of the incident. Although the Sessions Court has relied upon the provisions pertaining to unlawful assembly as being a reason to reject the bail application, the reason recorded in paragraph No.8(b) hereinabove in the case of Junaid Mukhtar Shaikh clearly applies to the applicant herein also. There is nothing to show that the applicant has any criminal antecedent and hence, this Court is inclined to allow the present application.

8. In view of the above, the application is allowed in the following terms:
- (i) The applicant shall be released on bail in connection with FIR No.0134 of 2024 registered on the said date at R.A.K. Marg Police Station, Mumbai, on furnishing PR Bond of ₹ 25,000/- 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 the R.A.K. Marg Police Station, Mumbai on first Monday of each month between 10:00 a.m. and 12:00 noon during the pendency of trial;
 - (iii) 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;

- (iv) 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.

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

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

11. The application is disposed of.

12. In view of disposal of the bail application, the interim application shall also stand disposed of.

(MANISH PITALE, J)

Priya Kambli