



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO. 475 OF 2024

Mohsin Shah s/o Mansoor Shah Vs State of Maharashtra

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. N.R. Tekade, counsel for the applicant.

Mr. A.G. Mate, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 19/07/2024.

1. The applicant came to be arrested on 04/07/2022, in connection with crime No. 34/2022 registered with Police Station Asegaon, District Washim for the offences punishable under Sections 307, 323, 504, 506 read with Section 34 of the Indian Penal Code, 1860.

2. The accusation against the present applicant is on the basis of a report lodged by Laxmibai Tulshiram Waghmare, on the allegation that the applicant is her neighbour and there was a previous dispute between them. On 12/02/2022, at about 2.00 p.m., when she was present in the house, the present applicant and other family members started abusing them. At the relevant time, the injured Samadhan came out of the house and asked them why they were abusing. At the relevant time, the present applicant has given a blow by knife on the head of the Samadhan, and the co-accused assaulted him by means of an axe. Due to the said blow, the injured has sustained the

injury, he immediately shifted to the hospital and was admitted to the hospital for 14 to 15 days.

3. It is submitted by learned counsel for the applicant that, initially, the bail application was withdrawn as disinclination shown by this court, and liberty was granted after six months. After six months also, only charge is framed, and there is no substantial progress in the trial. As far as the merit of the matter is concerned, from last two and half years, the applicant is behind bar, and there is no substantial progress in the trial. The injured is also not under the apprehension of death, he is discharged from the hospital and is not taking further treatment. The further incarceration of the present applicant is not required, and he is ready to abide all the conditions imposed by this Court.

4. Learned APP strongly opposed the said application on the ground that the applicant is the person who has given a blow of knife on the vital part of the body of the injured, i.e., the head. The injured was hospitalized for 14 to 15 days; thereafter, he has taken the treatment. There was an intracranial hemorrhage into the injured. Considering the gravity of the offence, the application deserves to be rejected.

5. After hearing learned counsel for the applicant and learned APP for the State, perused the investigation papers, as far as the allegations are concerned, there is no dispute as to the fact that due to the blow by the knife by the present applicant, the injured has sustained the head injury on the

scalp. The scalp report shows that he has sustained a displaced fracture involving the left thigh parietal bone associated with extensive subgaleal hematoma involving the adjacent scalp and hemorrhagic contusion involving left parietal regions associated with moderate perilesional edema was also seen.

6. Thus, the prima-facie case is made out against the present applicant, but considering that liberty was granted and the trial court was directed to expedite the trial, there is no substantial progress, only the charges are framed. Considering the fact that the applicant has been incarcerated for more than two and half years, there is no substantial progress, and the injured is now discharged from the hospital. There is no apprehension of death. The application for grant of bail deserves to be considered.

7. Now, the Hon'ble Apex Court has also dealt with the case of *Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari Vs State of Uttar Pradesh, reported in Criminal Appeal No. 2790/2024, decided on July 18, 2024*, which emphasised the right to life and personal liberty enshrined under Article 21 of the Constitution of India and held that a constitutional court cannot be restrained from granting bail to an accused on account of restrictive statutory provisions in a penal statute if it finds that the right of the accused - undertrial under Article 21 of the Constitution of India has been infringed. In that event, such statutory restrictions would not come in the way. Even in the case of

interpretation of a crime penal statute, howsoever stringent it may be, a constitutional court has to lean in favour of constitutionalism and the rule of law, of which liberty is an intrinsic part. In the given facts of a particular case, a constitutional court may decline to grant bail. But it would be very wrong to say that, under a particular statute, bail cannot be granted.

8. In the light of the above facts of the present case, considering that, now there is no apprehension of death to the injured. The investigation is already completed and charge-sheet is already filed, though the trial was expedited, there is no substantial progress in the trial, the application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass the following order:

- a) The application is allowed.
- b) The applicant – Mohsin Shah s/o Mansoor Shah shall be released on bail, in connection with crime No. 34/2022 registered with Police Station Asegaon, District Washim for the offences punishable under Sections 307, 323, 504, 506 read with Section 34 of the Indian Penal Code, 1860, on executing P.R.Bond of Rs. 25,000/- with one solvent surety in the like amount.
- c) The applicant shall not enter into the vicinity of village – Depul, District Washim till culmination of the trial.

- d) The applicant shall not induce, thereat or promise any witnesses who are acquainted with the facts of the present case.
- e) The applicant shall attend the proceedings before the Sessions Court without seeking any exemption unless there are exceptional circumstances.
- f) The contravention of any of the condition imposed by this Court would lead to the cancellation of the bail.

The criminal application is **disposed of**.

[URMILA JOSHI-PHALKE, J.]