



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

35 CRIMINAL APPEAL NO. 723 OF 2024

**WAHAB MOINODDIN SHAIKH
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

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Advocate for the Appellant : Mr.Pankaj A.Bharat h/f.

MrUddhav Laxmanrao Momale

APP for Respondent/State : Mrs.Chaitali Choudhari Kutti

Advocate for Respondent No.2 : Mrs. Ankita Jayprakash Mantri
(Appointed through Legal Aid)

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CORAM : SHAILESH P. BRAHME, J.

DATE : 24th MARCH 2025

PER COURT :

1. Heard both sides.

2. The appellant is aggrieved by rejection of his Regular Bail vide order dated 26.07.2024 passed below Exhibit-35 in Special Case (Atrocity)No.65 of 2023. At the instance of Respondent No.2/brother of the deceased bearing Crime No.0591 of 2023 was registered against the present appellant and other three persons.

3. Learned counsel for the appellant submits that there is nothing incriminating against the appellant except theory of last seen together. Appellant is entitled to bail on the ground of parity because co-accused Mahesh and Adil were released on bail by this Court. The

investigation is over and there is no point in detaining the appellant behind bars.

4. Learned APP relies on affidavit-in-reply. She would submit that appellant is the master-mind and he was repeatedly visiting place of the deceased. He was behind him. The post-mortem report indicates as many as fourteen injuries on the vital part of the body. My attention is adverted to statement of Prashant and Akash to show that in all probabilities appellant is the person who alienated the deceased.

5. Learned counsel Mrs.Mantri appearing for Respondent No.2 adopts the submissions of learned APP. Additionally, it is submitted that appellant has played active part in committing the offence. As the offence is serious and the role played by appellant is more pre-dominant, he is not entitled to bail.

6. Respondent No.2 registered First Information Report 26.09.2023 which indicates that appellant was last seen in company of present appellant and other three persons on 25.09.2023. On 26.09.2023 the appellant was arrested. Charge-sheet was filed on 23.11.2023. Co-accused Mahesh was enlarged on bail vide order dated 29.01.2024 in Criminal Appeal No.1181 of 2023. Co-accused Adil was released on bail vide order dated 22.07.2024 in Criminal Appeal No.255 of 2024. All three accused are on bail.

7. I have considered statements of Prashant and Akash. Except

theory of last-seen together, there is nothing against the appellant. There is no direct evidence in this matter. The deceased was having fourteen injuries but in the absence of the incriminating material to connect the appellant to the overt act, it can not be said at this juncture that he played active role in inflicting the injuries. The accused were behind deceased and searching for him for entire day can not take the case further. The principle of parity is attracted in the present case. I am inclined to adopt the reasons assigned by co-ordinate bench in releasing the co-accused Mahesh and Adil on bail. Hence, I pass following order :

ORDER

- a) Criminal Appeal is allowed.
- b) Impugned judgment and order dated 26.07.2024 is quashed and set-aside.
- c) The Appellant-Wahab Moinoddin Shaikh shall be released on bail in Crime No. 591 of 2023 on furnishing personal bond and solvent surety to the extent of Rs.15000/-(Rupees Fifteen Thousand Only)
- d) Appellant shall not contact the prosecution witnesses.
- e) Learned counsel Mrs.Mantri appearing for Respondent No.2 is entitled to quantification of fees as prescribed by Legal Aid Services Authority.

[SHAILESH P BRAHME, J.]