

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.178 OF 2024

Ashok Shankar Kharat ...Applicant

vs.

The State of Maharashtra ...Respondent

VISHAL
SUBHASH
PAREKAR

Digitally signed
by VISHAL
SUBHASH
PAREKAR
Date: 2025.01.15
10:34:06 +0530

WITH

BAIL APPLICATION NO.1052 OF 2024

1. Vikas Omkar Chaveriya

2. Mohd. Hanif Ramzan Ali Khan ...Applicants

vs.

The State of Maharashtra ...Respondent

Mr. Ganesh Bhujbal, (through Legal Aid), for the Applicant in BA No. 178 of 2024.

Mr, Subodh Desai, Senior Advocate a/w.Mr. Hemant Ingle, Mr. Tushar Khandare and Mr. Pratik Ingle, for the Applicants in BA No. 1052 of 2024.

Mr. Y.M. Nakhwa, APP for the State.

CORAM : N. J. JAMADAR, J.

DATE : JANUARY 13, 2025

P.C.:

1. The applicants, who are arraigned in C.R.No. 25 of 2023 registered with DCB CID (AEC), Mumbai for the offences punishable under sections 120-B, 307, 506(2), 504 and 201 read with 34 of Indian Penal Code, 1860, seek to be enlarged on bail.

2. The first informant is a spokesperson of a political party. The first informant has his morning walks at Shivaji Park, Dadar, Mumbai. On 3rd March, 2023, as usual, the first informant came to

Shivaji Park for the morning walk. When he passed gate No. 5, somebody gave a blow by means of a hard object on his right leg. As the first informant turned around, he noticed 3 to 4 assailants armed with bats and stumps. They unleashed the blows by their respective weapons. The first informant attempted to fend off the blows on his head with hands and in the process fell down. Thereupon, the assailants unleashed further blows by uttering words to the effect that the first informant was coming in the way of the leaders of another political party. When other joggers and passers by tried to come to the rescue of the first informant, the assailants threatened to beat them as well. After assaulting the first informant, the assailants fled away towards Raja Badhe Chowk.

3. During the course of investigation, the applicants came to be arrested. It transpired that the applicants were the confederates in the conspiracy to perpetrate murderous assault on the first informant. The images of Ashok Kharat, the applicant in BA No. 178 of 2024, and his associates, while they were proceeding towards scene of occurrence, were captured by CCTV. Ashok Kharat, was seen throwing away the stump, he was armed with, and running towards Shobha Hotel.

4. Mr. Subodh Desai, learned Senior Advocate for the applicants in BA No. 1052 of 2024, submitted that though the applicant Nos. 1

and 2 were arrested on 11th March, 2023 and 8th March, 2023, respectively, yet in the panchanama of the footages in CCTV drawn on 13th March, 2023, the applicants have neither been identified nor attributed any specific role, unlike the co-accused Ashok Kharat (A1) and Kisan Solanki (A2). The learned counsel further submitted that Kisan Solanki (A2), the named accused, has been enlarged on bail by the learned Sessions Judge by an order dated 6th January, 2025. Mr. Desai laid emphasis on the fact that even if the prosecution case is taken at par, the offence punishable under section 307 cannot be said to have been prima facie made out. Inviting the attention of the Court to the injury certificate issued by P.D. Hinduja Hospital dated 9th May, 2023, which indicates that the injury to forearm, sustained by the first informant, resulted in undisplaced fracture of ulna, Mr. Desai would urge that having regard to the nature of injury and alleged weapon of assault, at best, an offence under section 326 can be said to have been prima facie made out. As the applicants are in custody since one year and ten months, the applicants deserves to be enlarged on bail.

5. Mr. Bhujbal, the learned counsel appointed to espouse the cause of the applicant in BA No. 178 of 2024, supplemented the submissions of Mr. Desai. It was urged that the material on record does not indicate that the applicant was the assailant. There was no

T.I. parade. The first informant had not known the applicant from before.

6. Mr. Nakhwa, the learned APP, resisted the prayer for bail. It was submitted that the murderous assault was perpetrated in pursuance of a criminal conspiracy. The applicants have antecedents. Therefore, the applicants do not deserve to be enlarged on bail.

7. To begin with, the injury certificate dated 9th May, 2023 indicates that the first informant had narrated the alleged history of assault by strangers who were wearing masks by means of cricket stump. The medical officer found injuries to right forearm and bilateral lower limb. X ray was suggestive of undisplaced fracture of right ulna. The images captured by CCTV, as described in the panchanama, indicate that one of the alleged assailant was armed with a cricket bat and another with a cricket stump. Thus, having regard to the weapons of offence and the nature of the injuries sustained by the first informant, prima facie, it appears debatable whether the assault was perpetrated with intent to commit murder of the first informant.

8. It is true, Ashok Kharat, the applicant in BA No. 178 of 2024, has been identified as one of the assailants from the images captured by the CCTV footages. The applicants in BA No. 1052 of

2024 have, however, not been named. Yet, the identity of the assailants, who perpetrated the actual assault, appears to be a matter for adjudication at the trial. The investigation is complete for all intent and purpose. Charge sheet has been lodged.

9. On the aspect of the antecedents of the applicants, it appears that Ashok Kharat (A1) was arraigned in as many as 13 cases. However, in 12 of those cases, registered during the period 1998 to 2007, Ashok Kharat has been acquitted. In the 13th case, being Special MCOC Case NO.7 of 2010, Ashok Kharat was acquitted of the offences punishable under sections 3(1)(ii), 3(2), 3(4) and 3(5) of the Maharashtra Control of Organized Crime Act, 1999 and has been convicted for the offences punishable under sections 386 and 387 read with 34 of the Penal Code and sentenced to suffer rigorous imprisonment for 5 years and fine of Rs. 1000/-. During the pendency of the trial, the applicant was on bail.

10. One crime has been registered against Vikas Chavariya (A1), and two crimes have been registered against Mohd. Hanif Khan. In the prosecution arising out of CR No. 265 of 1998, Mohd. Hanif Khan was convicted for an offence punishable under section 302 read with 34 of the Penal Code.

11. The Court can not loose sight of the time lag in the registration of last of the crimes against each of the applicants and

the instant case. By the passage of time, the link of continuous criminal activity seems to have been snapped.

12. Therefore, in the facts of the case, especially having regard to the nature of the accusation, the role attributed to the applicants and the injuries suffered by the first informant, the antecedents of the applicants do not appear to be of such nature as to disentitle the applicants from the relief of bail.

13. I am, therefore, inclined to exercise the discretion in favour of the applicants.

Hence, the following order.

ORDER

1] The applications stand allowed.

2] The applicants be released on bail in C.R.No. 25 of 2023 registered with DCB CID (AEC), on furnishing a P.R. Bond of Rs. 30,000/- each with one or more sureties in the like amount, each.

3] The applicants shall mark their presence at DCB CID (AEC), Mumbai office on 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 applicants 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 so as to dissuade him from disclosing such facts to Court or to any Police Officer.

5] The applicants shall furnish their contact numbers and residential addresses to the investigating officer and shall keep him updated, in case there is any change.

6] The applicants shall regularly attend the proceedings before the jurisdictional Court.

7] 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 applicants and the co-accused and the trial Court shall not be influenced by any of the observations made hereinabove.

Applications disposed.

(N. J. JAMADAR, J.)