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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 2608 OF 2024

Shanu Chand Mohd Khan

.. Applicant

Versus

The State of Maharashtra

.. Respondent

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- Mr. Rajas Naik, Advocate for Applicant.
 - Ms. Megha S. Bajoria, APP for Respondent – State.
 - PSI Madan Waghmare for Nirmal Nagar Police Station present.
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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 19, 2025.

P.C.:

1. Heard Mr. Naik, learned Advocate for Applicant and Ms. Bajoria, learned APP for Respondent – State.

2. Present Bail Application is filed by Applicant – Shanu Chand Mohd Khan in connection with C.R. No. 85 of 2023 registered with Nirmal Nagar Police Station for offences punishable under Sections 302, 324, 323, 504 readwith 34 of the Indian Penal Code, 1860. There are in all two accused in the crime and present Applicant is arraigned as Accused No.2 in the crime. He is incarcerated since 10.02.2023 i.e. for 2 years 1 month and 10 days.

3. Briefly stated first informant is the wife of deceased victim. Prosecution case is that on 09.02.2023 at about 11:00 p.m., first informant's nephew came to her residence and informed her that

deceased victim and accused No.1 had engaged in a skirmish after which first informant alongwith her sister-in-law immediately rushed to the incident spot. It is alleged that during the skirmish Applicant – accused No.2 (brother of accused No.1) assaulted deceased – victim with fist and kick blows and also handed over a knife to accused No.1 with which he stabbed the deceased – victim leading to fatal injuries. Nephew of first informant intervened in the fight in order to quell the same, however he got injured with the knife. Deceased – victim was taken to the hospital by first informant, her nephew and sister-in-law, however he was declared dead on admission. Precursor to the aforesaid incident as per prosecution case is that Accused No.1 owed an amount of Rs.500/- to the deceased – victim and as deceased – victim repeatedly followed-up and demanded the money, Accused No.1 committed the alleged act.

4. Mr. Naik, learned Advocate for Applicant would submit that considering the alleged role attributed to the Applicant of having assaulted the deceased with fist and kick blows no offence under Section 302 of IPC can be made out against him. He has drawn my attention to the post-mortem report appended at page No.116 wherein at page No.122 the cause of death is mentioned as “hemorrhagic shock due to stab injury” and would submit that the alleged role of inflicting 3 stab injuries has been attributed to Accused No.1 (brother of present Applicant). He would submit that though there are witness statements

on record to establish the presence of Applicant at the time of incident they are all interested witnesses and that independent evidence collected from the incident spot i.e. CCTV footage shows technical glitches and forensic report is not appended to the charge-sheet. He would submit that even Test Identification Parade to identify presence of the Applicant at the time of incident is not conducted by the prosecution and hence there is no sufficient *prima facie* material on record to corroborate the prosecution case against Applicant.

4.1. He would submit that though prosecution is relying on the disclosure statement of Applicant which led to recovery of the alleged weapon used in the alleged crime, the said statement is inadmissible in evidence as per provisions of Section 25 of the Indian Evidence Act, 1872. He would submit that Applicant had no motive to commit the alleged crime as he did not even know the deceased – victim and it was his brother (accused No.1) who was known to him.

4.2. He would submit that the investigation is completed and charge-sheet has been filed in the Trial Court. He would submit that trial has not commenced as charges have been framed only on 06.03.2025 which is after a period of almost 2 years after filing of the charge-sheet and prosecution has given a list of 44 witnesses in the charge-sheet. Hence he would submit that there is no possibility of completion of trial in the near foreseeable future. Hence he would urge

the Court to enlarge the Applicant on bail.

5. Ms. Bajoria, learned APP would at the outset urge the Court to consider the gravity and heinousness of the crime. She would submit that the motive behind commission of the crime is evident from the statements of the first informant – wife of the deceased victim. She would submit that presence of Applicant is established at the incident spot by eye-witness statements placed on record in the charge-sheet and also CDR details. She would submit that all eye-witness statements corroborate the role of Applicant having assaulted the deceased – victim by fist and kick blows and also having given the weapon i.e. knife to accused No.1 and after commission of the crime taking the said knife from him and hiding it as the place from which it has been recovered at his instance. She has drawn my attention to the forensic report of the weapon – knife appended at page No.124 of the Application and would submit that the same corroborates with the injuries mentioned in column No.17 of the post-mortem report. Hence she would submit that Applicant's role and his presence is clearly established from the material placed on record and hence his Bail Application be rejected.

6. I have heard the learned Advocates at the Bar and with their able assistance perused the record of the case.

7. In the present case it is seen that the alleged role specifically attributed to Applicant is of assaulting the deceased – victim with fist and kick blows and as per the post-mortem report, death of deceased – victim has occurred owing to stab injuries allegedly inflicted by accused No.1. Even though it is alleged that the weapon – knife was handed over to accused No.1 by present Applicant, there is no sufficient material on record to *prima facie* substantiate and / or corroborate the said allegation except for witness statements. Even though recovery of the weapon i.e. knife is at the instance of Applicant, he has not been attributed the role of inflicting injuries with the said weapon – knife which resultantly led to demise of deceased victim. From the material placed on record it is *prima facie* evident that resultant death of deceased victim cannot be attributed to the Applicant's alleged act of assaulting victim with fist and kick blows. This is my *prima facie* opinion. Needless to state that complicity of Applicant in the crime shall be established by the prosecution at trial.

8. Considering the role attributed to the present Applicant in the alleged crime coupled with my above *prima facie* observations, Applicant has made out a case for grant of bail. Hence, Bail Application is allowed subject to the following terms and conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- with

one or two sureties in the like amount;

- (ii) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;
- (iii) Applicant shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;
- (iv) Applicant shall co-operate with the conduct of trial and attend the trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if he does so, it will entitle the prosecution to apply for cancellation of this order;
- (v) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (vi) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner;
- (vii) Before his actual release from jail, Applicant shall furnish his address where he proposes to reside after his release from jail to the concerned Police Station and also to the trial Court; and

(viii) In case of any infraction of the above conditions and / or two consecutive defaults in marking his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

9. It is clarified that the observations made in this order are limited for the purpose of granting Bail only and I have not made any observations on merits of the case. The trial shall be adjudicated on the strength of the evidence led and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

10. Bail Application No.2608 of 2024 is allowed and disposed.

[MILIND N. JADHAV, J.]

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