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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 2797 OF 2024

Mohd. Aasif Ashik Ali Khan @ Dilwar .. Applicant

Versus

State of Maharashtra & Anr. .. Respondents

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- Mr. Anil Bansode a/w Mr. Wasim Prandarwala for Applicant
- Ms. Shilpa K. Gajare-Dhumal, APP for Respondents - State

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 5, 2025

P. C.:

1. Heard Mr. Bansode, learned Advocate for Applicant and Ms. Gajare-Dhumal, learned APP for Respondents-State.

2. Applicant - accused has filed the present Application for regular bail under Section 439 of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C.") in connection with Crime No. 371/2019 registered with Shivaji Nagar Police Station, Govandi, Mumbai under Sections 302, 307, 323, 504, 506(2) r/w 34 of the Indian Penal Code, 1860 (for short "IPC"); Sections 4, 25 & 27 of the Indian Arms Act 1959 and Sections 37(1)(A) of the Maharashtra Police Act, 1951. Applicant has been in incarceration since 22.07.2019 and as of today he has undergone a period of detention for 5 years 7 months & 12 days.

3. There are three accused in the crime. Accused No. 1 is Faiz Himayatulla Shaikh, accused No. 2 is Mohd. Aasif Ashik Ali Khan @ Dilwar i.e. present Applicant and accused No. 3 is Shahrukh Farid Khan @ Papa, however in the FIR lodged on 22.07.2019, there is reference to 5 persons in all and therefore it is rather surprising as to why only 3 accused persons have been indicted and arrested in the present case. There are two victims:- one injured victim - Mohd. Shakeel and the other deceased victim.

4. In the FIR, first informant has stated that accused No. 1 assaulted the deceased victim and the first informant with a sword and iron rod. Insofar as the happening of the incident is concerned, he has stated that at about 4.30 a.m. on 22.07.2019, he along with deceased victim and two other friends were proceeding towards their house in Bangan Wadi area of Govandi, Mumbai. They spotted accused Nos. 1 and 2 and three other persons standing on the road. Accused No. 1 was armed with sword in his hand whereas accused No. 2 was holding an iron rod. The deceased victim with his mobile phone captured a picture/video of the accused persons while they were standing. Upon noticing this, Accused No. 1 approached the deceased victim, threatened him, and demanded that he delete the said pictures/videos from his mobile phone. Thereafter, Accused No. 1, along with others, assaulted the deceased victim with a sword and

iron rod. The first informant was with the deceased victim and he also received a few blows and was injured in the scuffle which took place. The statement of the first informant appears to have been improvised through the supplementary statement recorded three days later i.e on 25.07.2019 which is appended at page numbers 35-36 of the Application. This is so because one day prior to the recording of the supplementary statement of the first informant, the statement of an independent witness who had accompanied the first informant and the victim at that time was recorded. The said statement *prima facie* states that the all accused persons (5 in number) were proceeding somewhere when the first informant along with the deceased victim and his friends spotted them. It is stated that the deceased victim confronted the accused persons and inquired about where they were going with the weapons while simultaneously recording their movement on his mobile phone. The independent witness states that one of the accused persons demanded that the deceased victim delete the recording from his mobile phone to which the deceased victim refused to do so and thereafter they left the place. This independent witness thereafter accompanied the first informant and the deceased victim to their house, spent some time thereafter with first informant and the deceased victim and left the place only after which they were

confronted by the accused persons and apparently as stated by the first informant the incident took place.

5. There exists a *prima facie* variance between the statement of the first informant, supplementary statement and the statement of the independent witness which was recorded by the prosecution after a period of four days following the incident. Furthermore, as per the first informant, role of the present Applicant has not been distinctly attributed whereas the FIR clearly states that it was Accused No. 1 who had assaulted the first informant and the deceased victim with a sword and an iron rod. In the absence of any specific role attributable to the present Applicant, he is entitled to be released on bail. That apart according to the first informant, role of the present Applicant having been clearly etched out in the FIR clearly stating that it was accused No. 1 who assaulted the first informant and the deceased victim with the sword and iron rod, and no role attributed to the present Applicant, I am inclined to release the Applicant on bail.

6. In view of the above *prima facie* observations and long incarceration of Applicant over a period of 5 years 7 months and 12 days and uncertainty of the trial being completed in the near foreseeable future, present Bail Application is allowed in terms of prayer clause (a) 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) Applicant is permitted to furnish provisional cash bail of Rs. 25,000/- for his release immediately and file undertaking that he will provide one or two sureties in the like amount of Rs. 25,000/- within a period of four weeks after his release from prison on bail which shall be accepted by the Court / Investigating Officer. The Applicant shall provide the sureties as directed;

(iii) Applicant shall report to the Investigating Officer of concerned Police Station on the third Saturday between 10:00 a.m. to 12:00 p.m. for the first three months and thereafter as and when called;

(iv) Applicant shall not enter the territorial jurisdiction of Govandi, Deonar & Mankhurd area till the conclusion of the trial, except for attending the IO for attendance and Court proceedings;

(v) 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;

(vi) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court. He shall deposit his passport, if any, within two weeks after being released on bail with the Trial Court;

(vii) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner;

(viii) Applicant shall keep the Investigating Officer informed of his current address and mobile contact number and / or change of residence or mobile details, if any, from time to time;

(ix) Any infraction of the above conditions shall entail cancellation of this order.

7. It is clarified that the observations in this order are limited for the purpose of granting Bail only and I have not made any observations on the merits of the case and the trial shall be adjudicated on the basis of evidence and strictly in accordance with law.

8. Bail Application is allowed and disposed.

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[MILIND N. JADHAV, J.]

RAVINDRA MOHAN AMBERKAR
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