

Ajay

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

CRIMINAL BAIL APPLICATION NO. 2978 OF 2024

Abbas Mohammed Ali Shaikh @ Addo

Applicant

.. (Orig. Accused No.3)

Versus

The State of Maharashtra

.. Respondent

WITH

CRIMINAL BAIL APPLICATION NO. 4151 OF 2024

Rehbar Umar Qureshi

Applicant

.. (Orig. Accused No.4)

Versus

The State of Maharashtra

.. Respondent

.....

- Mr. Amrish Salunke a/w. Ms. Shraddha Shinde, Mr. Durgesh Pandey, Ms. Tanvi Gaikwad and Ms. Dipali Patil, Advocates for Applicant in Bail Application No.2978 of 2024.
- Mr. Sudeep Pasbola, Senior Advocate i/by Mr. Husen Shaikh a/w. Mr. Ayush Pasbola, Mr. Rohin R. Chauhan, Advocates for Applicant in Bail Application No.4151 of 2024.
- Mr. R.M. Pethe, APP for Respondent – State in both Bail Applications.
- Mr. Vijay Chaudhari, Bandra Police Station present.

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 23, 2025.

P.C.:

1. Heard Mr. Salunke, learned Advocate for Applicant in Bail Application No.2978 of 2024; Mr. Pasbola, learned Senior Advocate for Applicant in Bail Application No.4151 of 2024 and Mr. Pethe, learned APP for Respondent – State in Both Bail Applications.

2. This is a group of two Applications under Section 439 of the Code of Criminal Procedure, 1973 seeking Regular Bail in connection with C.R.No.2117 of 2023 registered with Bandra Police Station for the offences punishable under Sections 302, 506(2), 509, 504, 120-B, 143, 144, 148 and 149 read with 34 of the Indian Penal Code, 1860 (for short 'IPC') and Sections 37(1) and 135 read with 142 of the Maharashtra Police Act, 1951.

3. On 28.03.2025, after hearing the learned Advocates for Applicants, the following order was passed:-

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- 1.** *Heard Mr. Shaikh, learned Advocate for Applicant and Ms. Ganapthy, learned APP for State.*
- 2.** *Mr. Shaikh, learned Advocate for Applicant would submit that out of 6 accused persons the role attributed to the Applicant who is arraigned as Accused No.4 is that after the incident took place, Applicant was summoned by main assailant namely Accused No.1 and after Applicant arrived at the scene of crime he held deceased victim. He would clarify further that the statement which is recorded by the prosecution states that Applicant tried to hold the deceased victim. He would submit that neither the Applicant was present when the incident began which led to the scuffle and the said alleged incident but only on account of he having been summoned by Accused No.1 who was known to him that he intervened. He would submit that Applicant has no direct role to play in the alleged crime neither has any motive for participating in the crime and therefore his incarceration is unwarranted in the aforesaid facts.*
- 3.** *Learned APP in the Applicant shall ascertain the veracity of the statements made by Mr. Shaikh from the prosecution case and the chargesheet and accordingly apprise the Court about the specific role of the Applicant to enable this Court to consider the case of the Applicant for grant of bail.*

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- 4.** *Heard Mr. Salunkhe, learned Advocate for Applicant and Ms. Newton, learned APP for State.*
- 5.** *Applicant in the present Application is arrayed as Accused*

No.3 in the present crime. According to Mr. Salunkhe Applicant – Accused No.3 was not present neither has any role or nexus with the incident which has occurred. He would fairly state that none of the statements recorded and appended to the chargesheet draw the role of the Applicant in the present case. This is a very strong statement and submission made by Mr. Salunkhe.

6. Learned APP appearing in the matter shall consider the submissions made by Mr. Salunkhe and apprise the Court after going through record apprise the Court the role attributable to the Applicant on the next adjourned date to enable this Court to consider the present Application.

7. Stand over to 3rd April, 2025.”

4. In the present crime, Applicants are arraigned as Accused Nos.3 and 4 in the same crime. Hence both Bail Applications are disposed by this common order.

5. First Information Report (FIR) is lodged on 28.12.2023 by the First Informant against Accused Nos.1 and 2 and 4 other persons in the present crime. There are total 6 Accused persons in the present crime. The role attributed by prosecution against Applicants is that they were the alleged unknown persons who participated in the crime alongwith Accused Nos.1 and 2. In so far as Accused Nos.5 and 6 are concerned, both of them have been enlarged on bail by the learned Sessions Court vide separate orders dated 24.07.2024 and 25.10.2024.

6. Prosecution case is based on eye witness evidence of 8 witnesses whose statements have been recorded and appended to the Applications. *Prima facie* it is seen that none of the eye witnesses have disclosed the name of Applicants in their respective statements neither there is any incriminating material placed on record to show nexus and

involvement of present Applicants in the alleged crime by the prosecution. Eye witness No.1 namely Bilal Jamal Chandu and Eye witness No.2 namely Imran Shaikh have recorded their statement under Section 161 of the Code of Criminal Procedure, 1973 which are appended at page Nos.64 and 68 of Bail Application No.2978 of 2024. Their Section 164 statements recorded before the Magistrate are appended at page Nos.66 and 70 of Bail Application No.2978 of 2024. In so far as Bilal Chandu is concerned, he has stated that 2 unknown persons had come from Chapel Road to help Accused No.1 and Imran Shaikh has stated that Accused Nos.1, 2, 4 and 1 girl reference being made to Accused No.5 were present at the scene of crime. Imran Shaikh has not stated the name of Accused No.3. Statements of the other 6 witnesses are appended from page Nos.73 to 83 of Bail Application No.2978 of 2024. Out of the 6 witnesses, 3 witnesses have disclosed the name of Accused Nos.1, 2 and 4 alongwith unknown persons being present at the scene of crime whereas 1 witness has disclosed all the assailants to be unknown persons.

7. Record of the prosecution shows that the motive of the crime was an incident occurred on 27.12.2023 at night when the victim alongwith his mother and other local friends was chatting in the area around Tony Stores when at a proximate distance Accused No.1 accompanied by Accused No.5 came on a scooty for having a cigarette smoke. Since the cigarette smoke was causing uneasiness and

discomfort to the First Informant and his group they urged Accused No.1 and Accused No.5 to move away from the place which led to a squabble between the parties. The said verbal altercation escalated to such an extent that it led to the parties physically handling each other for sometime, however the said altercation was reconciled by the victim's friends.

8. It is seen that Accused No.1 being enraged made a phone call to some persons and called them to help him and Accused No.5 and Accused No.2 alongwith some unknown persons presumed to be the present Applicants arrived at the scene of crime. Thereafter according to prosecution case Accused No.2 removed a dagger from his pocket whereas Accused No.1 removed a dagger from the scooty and charged upon the victim and assaulted him. Rrecord shows that Accused Nos.1 and 2 are both siblings.

9. *Prima facie* it is seen that there was no pre-meditation or any plan to attack or assault the victim by the present Applicants. In so far as present Applicants before me are concerned, it is the case of prosecution that Accused No.4 was present who had come on a motorcycle and was wearing a helmet and had a cloth wrapped around his face inside his helmet. This is the only allegation in so far as Accused No.4 is concerned. In so far as Accused No.3 is concerned, *prima facie* there is no specific material placed on record by the

prosecution or emanating from any of the witness statements to identify his presence at the scene of crime.

10. Mr. Pethe, learned APP has persuaded the Court to refer to and rely upon the CDR records stating that all Accused persons were in constant in touch with each other immediately after the crime had occurred and therefore all of them are complicit in the said crime.

11. I have heard Mr. Salunke, learned Advocate for Applicant in Bail Application No.2978 of 2024; Mr. Pasbola, learned Senior Advocate for Applicant in Bail Application No.4151 of 2024 and Mr. Pethe, learned APP for Respondent – State in both Bail Applications and with their able assistance perused the record of case.

12. *Prima facie* it is seen that the motive of the crime was something which happened at the spur of moment and led to the unfortunate incident of assault by Accused Nos.1 and 2. According to prosecution case and witness statements which have been recorded, Accused Nos.1 and 2 have been specifically identified with having carried out the assault on the victim. In so far as role of Accused No.3 is concerned, it is merely based on identification by some of the witnesses stating that he was present at the scene of crime, but no specific role whatsoever has been attributed to him by any of the witnesses.

13. That apart, there is also a dichotomy regarding his specific identification since it is stated in the witness statement that he was wearing a helmet and handkerchief around the face inside the helmet. In so far as Accused No.3 is concerned, *prima facie* there is nothing incriminating placed on record to show his direct nexus and involvement in the present crime.

14. Needless to state that complicity of the Applicants shall be proved by the prosecution at the time of trial.

15. In view of the above *prima facie* observations and the role attributed to the Applicants discussed herein above, in my opinion both Applicants can be released on bail.

16. Hence, both Bail Applications are allowed subject to the following terms and conditions:-

- (i) Applicants are directed to be released on bail on furnishing P.R. Bond in the sum of Rs.25,000/- each with one or two sureties in the like amount;
- (ii) Before their actual release from jail, Applicants shall furnish their address where they propose to reside after their release from jail to the concerned Police Station and also to the trial Court;

- (iii) After their release from jail, Applicants shall report to the Investigating Officer as and when called for;
- (iv) Applicants shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark their presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicants shall mark presence on the next working day;
- (v) Applicants 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 they do so, it will entitle the prosecution to apply for cancellation of this order;
- (vi) Applicants shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (vii) Applicants shall not influence any of the witnesses or tamper with the evidence in any manner; and
- (viii) In case of any infraction of the above conditions and/or two consecutive defaults in marking their attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

17. 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.

18. Both Bail Applications are allowed and disposed.

[MILIND N. JADHAV, J.]

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