

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3493 OF 2024

Rehan Tajuddin Shaikh

...Applicant

vs.

The State of Maharashtra

...Respondent

Mr. Vinod Kashid a/w. Mr. Abdul Shaikh, Mr. Vinod Kashid and Mr. Sumit Bhoite, for the Applicant.

Mr. Kaushik Mhatre (through VC), Spl. P.P. a/w. Mr. S.H. Yadav, for the State.

Mr. Rajendra Khedkar, PI, Naya Nagar police station.

CORAM : N. J. JAMADAR, J.

DATE : JANUARY 09, 2025

P.C.:

1. Heard the learned counsel for the parties.

2. The applicant, who is arraigned in C.R. No. 34 of 2024 registered at Naya Nagar police station for the offences punishable under sections 307, 341, 141, 143, 147, 149, 427 and 109 of Indian penal Code, 1860 and section 4 read with 25 of Arms Act 1959, seeks to be enlarged on bail.

VISHAL
SUBHASH
PAREKAR

Digitally signed
by VISHAL
SUBHASH
PAREKAR
Date: 2025.01.11
11:52:50 +0530

3. At the outset, Mr. Vinod Kashid, learned counsel for the applicant, submitted that 16 co-accused have been enlarged on bail by this Court by an order dated 9th December, 2024 passed in B.A. No. 3014 of 2024 and connected applications by recording elaborate reasons. The role attributed to the applicant is that of having been seen in the CCTV footages alongwith the mob which had allegedly

formed an unlawful assembly, in prosecution of the common object of which the offences were allegedly committed. No specific role has been attributed to the applicant.

4. Mr. Kaushik Mhatre, the learned Special PP for the State, submitted that the applicant has been seen in the CCTV footages and also identified by the witnesses in TI parade, as one of the members of the unlawful assembly. The learned counsel, however, fairly submitted that the principle of parity may apply. Nonetheless in view of the decision of the Supreme Court in the case of **The State of Jharkhad vs. Dhananjay Gupta @ Dhananjay Prasad Gupta**¹ the innocence claimed by the accused and the absence of overt act, when the provisions of section 149 of the Code are invoked, can not be a ground to enlarge the applicant on bail.

5. Suffice to note that in the order dated 9th December, 2024 this Court had considered the material pressed into service against the co-accused, which was also in the nature of the images captured in the CCTV footages and the identification of the accused in the TI parade, and observed, inter alia, as under:-

19] At this stage, the question as to whether an offence punishable under Section 307 of the Penal Code is made out, is not required to be delved into elaborately. Undoubtedly, a bodily injury sufficient to cause death is not an ingredient of an offence punishable under Section 307 of the Penal Code. Reliance placed by Mr. Mhatre on the decision of the Supreme Court in the case ***Saleem alias Chamaru*** (supra) is impeccable. In the facts of the case at hand, the pivotal question which would warrant adjudication at the trial would be whether each of the

1 Cri. Appeal Arising Out of SLP (Crl) No. 10810/2023 07/11/23.

applicants shared the common object to commit the offence punishable under Section 307 of the Penal Code.

20] On the aspect of the identity of the applicants as the members of unlawful assembly, the prosecution primarily relies upon the images captured in the CCTV. Fahad Shaikh (A5) and Abdul Rashid Qureshi (A11) are not seen in the video recordings. Images of accused Nos.1, 2, 6, 7, 10, 12, 14, 15, 16 and 18 have been captured in the CCTV camera as a part of the mob. Few of them have been captured running, gesticulating or giving exhortation. Sabir Pawar (A17), the applicant in BA/3023/2024 is seen attacking the Mahindra SUV car and instigating others. Abdul Samad Shaikh (A13), the applicant in BA/3014/2024, is seen damaging the car and raising the slogans. *Prima facie*, it does not appear that in the CCTV cameras have captured any of the applicants assaulting the first informant by means of the knife, as alleged, or for that matter, any of the injured witnesses. That brings to the fore the question of constructive criminality.

21] The prosecution also banks upon the identification of the applicants in the Test Identification Parade. As noted above, the identification of the accused by the prosecution witnesses does not appear to be with reference to the role of the particular identified accused in the alleged occurrence. The aspect as to whether the delay erodes the sanctity and veracity of the Test Identification Parade, and the weight to be attached to the mere identification in the Test Identification Parade, sans ascribing a particular role, are matters for trial.

22] Another aspect which deserves consideration is the element of caution which is required to be observed where a huge mob has allegedly indulged in rioting and there are a number of victims/injured. In such a situation, though, as a rule, it is the quality and not quantity of evidence that matters, the plurality of evidence and element of corroboration are looked for, as a matter of caution. In the case at hand, the alleged rioting was committed by more than 50 to 60 persons. Where the guilt of the accused would hinge upon their identity as the members of the unlawful assembly, who shared the common object to commit the alleged offences, their further detention as under-trial prisoners appears tenuous.

... ..

28] The applicants have been in custody since January, 2024. Having regard to the nature of the occurrence, the number of the accused, the number of witnesses and especially the nature of the evidence the prosecution may be required to adduce, it appears extremely unlikely that the trial can be concluded within a reasonable period. The further detention of the applicants as under-trial prisoners thus appears unwarranted. I am, therefore, inclined to exercise the discretion in favour of the applicants.

6. The aforesaid reasons which weighed with this Court apply with equal force to the claim of the applicant for bail. The principle of parity fully applies. Prima facie, the role attributed to the applicant appears to be that of being a member of the mob of more than 100 persons. The applicant has been in custody since 25th January, 2024. Further detention of the applicant appears wholly unwarranted. I am, therefore, inclined to exercise the discretion in favour of the applicant.

Hence, the following order.

ORDER

- (i) Application stands allowed.
- (ii) Rehan Tajuddin Shaikh, the applicant, be released on bail in C.R. No. 34 of 2024 registered at Naya Nagar police station furnishing a PR bond in the sum of Rs.30,000/- and one or two sureties in the like amount, to the satisfaction of the trial Court.
- (iii) The applicant shall mark his presence at Naya Nagar Police Station, Mira Road, on the first Monday of every alternate month between 11 am to 1 pm for a period of three years or till the conclusion of the trial, whichever is earlier.

- (iv) The applicant shall not tamper with the prosecution evidence.
The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any police officer.
- (v) On being released on bail, the applicant shall furnish his contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.
- (vi) The applicant shall regularly attend the proceedings before the jurisdictional Court.
- (vii) 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 applicant and co-accused and the trial Court shall not be influenced by any of the observations made hereinabove.

Application disposed.

(N. J. JAMADAR, J.)