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

CRIMINAL BAIL APPLICATION NO. 4960 OF 2024

Mohd. Ibrahim @ Arbaz Taish Mohd. Choudhary .. Applicant

Versus

The State of Maharashtra

.. Respondent

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- Ms. Puja Yadav, Advocate i/by Mr. Shreerat Kamath for Applicant.
 - Mr. R.M. Pethe, APP for Respondent – State.
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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 10, 2025.

P.C.:

1. Heard Ms. Yadav, learned Advocate for Applicant and Mr. Pethe, learned APP for Respondent – State.

2. This is an Application under Section 439 of the Code of Criminal Procedure, 1973 seeking Regular Bail in connection with C.R.No.501 of 2020 registered with Shivaji Nagar Police Station for the 302, 307 and 324 read with 34 of the Indian Penal Code, 1860 (for short '**IPC**'); Sections 4 and 25 of the Arms Act, 1959 and Section 37(1)(a) of the Maharashtra Police Act, 1951.

3. Applicant is arraigned as Accused No.3 in the present crime. There are in all 4 accused persons. Accused No.1 is Kunal @ Kallu Sharma; Accused No.2 is Mohd. Mehraj Khan; Accused No.3 is the present Applicant and Accused No.4 is Mastan Khan. Applicant is

arrested on 26.09.2020

4. First Informant is Mohammad Qureshi who received a phone call on the time of incident at 10:30 p.m. on 25.09.2020 from the deceased victim Taslim Qureshi informing him that the aforesaid 4 Accused persons were assaulting him with a sword and bamboo stick. At that time, First Informant alongwith some of his family members reached the incident spot in order to quell the quarrel between the parties and intervened. Necessarily there is a motive which can be *prima facie* seen from the record of the case but since witness action of PW-1 is already over and trial is in progress, I would dissuade myself from commenting upon the motive *lest*, it would affect the ongoing trial in the present case.

5. First Informant was also charged upon by the Accused persons upon which he left from the place and once again returned back with more people in order to aid and assist the deceased Taslim Qureshi and quell the quarrel. In the First Informant's statement as also the witness statements which are placed on record, *prima facie*, it is seen that role attributed to the present Applicant arraigned as Accused No.3 before me is that of he having assaulted the deceased victim's brother Azim Qureshi with a sword according to First Informant.

6. However, witness statements of the injured victims appended at page No.44 (Mohd. Rehmat Qureshi), page No.45 (Modh. Shahdab Mohd. Ahmed Qureshi) as also page No.46 (Mohd. Azim Qureshi) whose reference is made by the First Informant when read *prima facie* digress from what is stated by the First Informant with respect to the weapon that is used. Reference in the witness statements to the present Applicant is that of he having used a knife (खंजीर).

7. Ms. Yadav, learned Advocate for Applicant has persuaded me to consider the examination-in-chief and cross-examination of PW-1 i.e. Complainant which is appended at page No.137 onwards to the Application. On perusing the said evidence, there is *prima facie* a doubt on the issue of recovery of the weapon which has also been argued by Mr. Pethe, learned APP because according to prosecution case the alleged weapon used by the Applicant has been recovered as informed by PW-1. His statement so recorded is appearing in page No.167 of the Application but it does not refer to the weapon stated by the witnesses.

8. Considering the long incarceration of the Applicant for 4 years and 6 months and that the trial would not be completed in the near foreseeable future and more precisely the role attributed to the present Applicant which can be gathered from the FIR, Applicant has

made out the case for grant of bail.

9. 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.50,000/- with one or two sureties in the like amount;
- (ii) 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;
- (iii) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;
- (iv) 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;
- (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;

(vii) Applicant shall not influence with 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 his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

10. 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.

11. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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