

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 5151 OF 2024**

Shafeeq Ahmad Khan @ Aadhi	...	Applicant
vs.		
The State of Maharashtra	...	Respondent

Mr. Mubin Solkar a/w. Mr. Tahir Hussain, Mr. Anas Shaikh and Hemal Shah for applicant.

Mr. Ajay Patil, APP for respondent-State.

Mr. Waman Kalu Thakare, API, Dharavi Police Station, Mumbai.

CORAM : MANISH PITALE, J.

DATE : 22nd JANUARY, 2025

P.C. :

. Heard learned counsel for the applicant and the learned APP for the respondent-State.

2. The applicant (accused No.5) is seeking bail as he was arrested on 28.06.2020 in connection with FIR No.265 of 2020, registered with Dharavi Police Station, Mumbai, for offences under Sections 143, 144, 147, 148, 149, 307, 323, 324 and 326 of the Indian Penal Code, 1860 (IPC), as also Sections 4 and 25 of the Arms Act, 1959 read with Section 37(1)(a) of the Maharashtra Police Act. Subsequently, offence under Section 302 of the IPC was added. The investigation was completed and the chargesheet was filed. The applicant has remained incarcerated since the date of his arrest.

3. At the outset, the learned counsel for the applicant relies upon order dated 12.11.2024 passed by this Court in Bail Application No.3926 of 2024, whereby accused No.8 Mohd. Kasim Kalamuddin Khan was granted bail. He submits that the applicant is entitled to

relief on the ground of parity. In fact, it is sought to be indicated that the case of the applicant can be said to be on a better footing, as compared to co-accused No.8. It is highlighted that the name of the applicant was not even mentioned in the FIR and that none of the eye-witnesses, except one, has taken the name of the applicant in the context of the incident that led to registration of the FIR.

4. The learned APP submits that the presence of the applicant on the date and time of the incident, can be said to be sufficiently established on the basis of the material on record. Additionally, it is submitted that the applicant has as many as 14 criminal antecedents and that therefore, this Court may not show any indulgence to the applicant. It is highlighted that in 3 of the 14 cases, the applicant has been convicted and this aspect ought to be taken into consideration in the facts and circumstances of the present case.

5. Since the applicant is seeking parity with accused No.8, this Court has perused the order dated 12.11.2024 passed in favour of the said co-accused person. In paragraph No.7 of the said order, this Court has recorded the reasons while granting bail, which include the fact that although the said co-accused person was named in the FIR, no specific overt act was attributed to him; the fatal blow in the said case, appears to have been given by the co-accused Furkan Qureshi by means of a knife; only one eye-witness named the said co-accused person, but general and omnibus allegation was made against the applicant; there was recovery of clothes and chopper at the behest of the said co-accused person, but there were no blood stains on the same and it was noted that the said co-accused person had suffered incarceration for a period of 4 years and 4 months and that even charge had not been framed.

6. The material placed on record alongwith the present application shows that the aforementioned grounds recorded in favour of the said co-accused No.8, appear to inure to the benefit of the applicant herein also. Additionally, it is found that the name of the applicant herein (accused No.5) was not even mentioned in the FIR. It is also relevant to note that neither the first informant nor his relatives, who were alleged to have been present on the date and time of the incident, took the name of the applicant as one of the assailants. It is only one eye-witness who has made general and omnibus allegation against the applicant, which may indicate his presence, but specific overt act is not attributed to him. There is no recovery at the behest of the applicant and it is a matter of record that the applicant has already suffered incarceration for about 4 years and 6 months. While the charge is yet to be framed, the prosecution intends to examine 35 witnesses in support of its case.

7. A clear case of parity or even the applicant being on better footing than the co-accused No.8, is made out in the present application and therefore, this Court is inclined to allow the application.

8. As regards the criminal antecedents of the applicant herein are concerned, there is substance in the contention raised on behalf of the applicant that only the said factor about criminal antecedents, on its own, cannot be a ground to deny relief to the applicant, if he has otherwise made out a strong *prima facie* case in his favour. Reliance placed on the judgment of the Supreme Court in the case of *Prabhakar Tewari vs. State of Uttar Pradesh and another* [(2020) 11 SCC 648], is apposite. This Court is inclined to follow the

observations made therein to the effect that even if the applicant/accused is alleged to have committed a serious offence and there are criminal cases pending against him, such factors by themselves cannot be the basis for refusal of bail.

9. Nevertheless, considering the criminal antecedents of the applicant, this Court is inclined to impose stringent conditions, while granting bail.

10. In view of the above, the application is allowed in the following terms:-

- (i) The applicant shall be released on bail in connection with in connection with FIR No.265 of 2020 dated 27.06.2020 registered at Dharavi Police Station, Mumbai, on furnishing PR. Bond of ₹ 50,000/- with one or two sureties in the like amount to the satisfaction of the trial Court.
- (ii) The applicant, upon being released on bail, shall report to local police station in the jurisdiction of which he resides, on the first Monday of every month between 10:00 a.m. and 12:00 noon, during the pendency of trial.
- (iii) The applicant shall not enter the jurisdiction of Mumbai District, during the pendency of the trial.
- (iv) The applicant shall appear before the trial Court, unless specifically exempted, for reasons to be recorded in writing. He shall cooperate with the trial Court for expeditious disposal of the trial.
- (v) Upon being released on bail, the applicant shall immediately, and in any case within a week, furnish the details of his active mobile number and residential address to the trial Court and update about the same, if there is any change.

(vi) The applicant shall not tamper with the evidence of the prosecution. He shall not influence the informant, witnesses or any other person concerned with the case.

11. Needless to say, violation of any of the aforesaid conditions would make the applicant liable to face proceedings for cancellation of bail. It is also clarified that the observations made in this order are limited to the question of grant of bail to the applicant in the present application and that the trial Court shall proceed further, without being influenced by the observations made in this order.

12. The bail application stands disposed of accordingly.

(MANISH PITALE, J)

Priya Kambli