

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

**INTERIM APPLICATION NO.3864 OF 2024  
IN  
CRIMINAL APPEAL NO.1055 OF 2024**

Wasim Mujfar Shaikh .... Applicant

versus

The State of Maharashtra .... Respondent

.....

- Mr. Gaurav Bhawnani i/b. Khan Abdul Wahab, Advocate for Applicant.
- Mr. Shreekant H. Yadav, APP for the State/Respondent.

**CORAM : SARANG V. KOTWAL, J.  
DATE : 31<sup>st</sup> JULY, 2025**

**P.C. :**

1. This is an application for bail pending final disposal of the Appeal preferred by the Applicant. The Applicant was the original accused in Sessions Case No.222/2022 before the Additional Sessions Judge, Greater Mumbai.

2. The learned Judge vide his Judgment and Order dated 22/08/2024, convicted the Appellant for commission of the offence punishable u/s 304(II) of the Indian Penal Code and

sentenced him to suffer rigorous imprisonment for ten years and to pay a fine of Rs.5,000/- and in default of payment of fine to suffer rigorous imprisonment for six months.

3. There were other four accused who had faced the trial, i.e. accused Nos.2 to 5. All of them were acquitted from the all the charges.
4. The Applicant was acquitted from the charges of commission of offence punishable u/s 143, 145, 147, 302, 452, 323, 504 r/w 149 of the Indian Penal Code and and u/s 37(1) (A), 135 of the Maharashtra Police Act. The Applicant was continuously in custody since 22/10/2021.
5. Heard Mr. Gaurav Bhawnani, learned counsel for the Applicant and Mr. Shreekant H. Yadav, learned APP for the State.
6. The prosecution case pertains to the incident dated 16/10/2021. The Applicant was having 3 to 4 Autorikshaw. He had given one of the Autorikshaws on rental basis to the first

informant Wajid Mohd. Shaikh. About 20 days prior to the incident in the present case, there was another incident, in which the Police Officers of Pantnagar Police Station had arrested the Applicant on the allegation of theft of a tyre. The Applicant was having the suspicion that he was arrested because of some information given by the informant Wajid. On 16/10/2021, the Applicant and all the other accused, who were his mother, sister and brother-in-law. came to the informant's house. They threw chilly powder on the informant and his wife. They beat him and his wife and then they went out of the house. The prosecution case is that after the Applicant and other accused came out of the house, there was another incident, in which the Applicant gave a blow with iron rod on the head of the informant's nephew Sohel. The injured was taken to the hospital. He succumbed to his injuries. Therefore, the FIR was lodged vide C.R.No.910/2021 at Shivaji Nagar Police Station, Mumbai. The investigation was carried out. The Applicant was arrested on 22/10/2021.

7. Learned counsel for the Applicant submitted that the

prosecution case is not true. In fact, the informant and his family members were chasing the Applicant and his family members. In that incident, the Applicant's sister who was the original accused No.4, was assaulted on her head causing CLW. This gave rise to the reasonable apprehension in the mind of the Applicant that grievous injuries would be caused to the sister and therefore to protect her, he picked up a Bamboo lying thereby and gave blow on the head of the person, who was assaulting his sister. The Applicant's family had immediately approached police with their written complaint narrating this incident, but no cognizance of that complaint was taken. He submitted that even otherwise the prosecution version is not correct. There are serious discrepancies between the evidence of three eyewitnesses examined by the prosecution. He submitted that there is no evidence to show that chilly powder was used by the Applicant's family. He submitted that to a large extent, the learned Judge has disbelieved the case, which is evident from the fact that all other accused are acquitted, though evidence against them is given by all the three eyewitnesses before the trial Court. He further submitted that the evidence of the informant shows that

he could not have seen the incident. The evidence of other witness is also equally doubtful. Learned counsel further submitted that out of 10 years, the Applicant has completed 3 years and 9 months of actual imprisonment. The balance sentence is less than 6 years. He submitted that the learned Judge has awarded the maximum sentence u/s of 304(II) of the IPC. No cogent reasons are given for imposing maximum sentence for that offence.

8. Learned APP on the other hand opposed these submissions. According to him, the evidence of the eyewitnesses was consistent. The Applicant had given a forceful blow on the head of the deceased. The nature of injuries show that it was done with full knowledge that death would be caused and therefore, the conviction and the sentence are properly recorded.

9. I have considered these submissions. There is no doubt that the deceased had suffered a head injury. The cause of death mentioned in the post-mortem note is as 'Shock due to cranio

cerebral injury in a case of assault'. The external injuries mentioned in column No.17 were three in numbers, out of which one was the abrasion and the second injury was a scratch abrasion, but the serious injury was on the left temporal region of the size 9 x 6 cm. Thus, there was one serious blow given on the head of the deceased.

10. PW.1 the informant Wajid Mohd. Shaikh has described the incident after giving the brief history about the previous incident in which the Applicant was arrested, he further described the main incident dated 16/10/2021. According to him, the Applicant and his family had come to his house. They had thrown chilly powder on his person and his wife. After that, they came outside the house. At that time, his nephew Sohail (deceased in this case) came there and he questioned the Applicant and his family. After that, the Applicant sat in Autorikshaw and started proceeding. But Sohail stopped them. At that time, the Applicant gave blow of a rod on Sohail's head. Significantly, the informant has further stated that at that time he was not there. He came immediately thereafter. He added

that Rickshaw driver Dilip told him that the Applicant had assaulted on the head of Soheli. He then again corrected himself and stated that the Applicant had assaulted Soheli by means of a rod. Thus, he has given contradictory statements in his examination. The significant aspect in this evidence is that the Applicant had not come with the intention of assaulting Soheli. In fact, he was returning back. Soheli stopped him and had questioned him. Even thereafter the Applicant had sat in his Autorikshaw and had started proceeding. Again Soheli had stopped him. At that time the blow was given. Therefore, there is some force in the submissions of learned counsel for the Applicant that Soheli could be the aggressor. This is supported by the injuries suffered by the Applicant's sister. That injury certificate is produced through the defence evidence.

11. The other eyewitness P.W.2 was mother of the deceased Soheli. P.W.1 has not spoken about presence of P.W.2 at the spot of incident. She has deposed that some quarrel was going on near her house and outside the house of her sister Firoja. According to her, when the Applicant and his family were

beating the informant and his wife, at that time, Soheli came there. He questioned the accused regarding the quarrel. At that time, the Applicant had allegedly taken out an iron rod and had given a blow on Soheli's head.

12. P.W.3 Dilip Gupta has also described the incident. He has stated that the Applicant and his family were beating Soheli by means of bamboo and iron rod. The Applicant gave blow with iron rod on Soheli's head. He added that one woman who was with the Applicant, herself caused injury to her own head. This is a clear attempt to explain the injury suffered by the Applicant's sister. This part of his evidence is extremely doubtful. There was no reason as to why the Applicant's sister would cause injury to herself at that very moment only to implicate the complainant's group in future.

13. Thus, reasonable doubt is created about the prosecution evidence. The Applicant is already in custody for about 3 years and 9 months. There is no justification for imposing maximum sentence. The deceased Soheli was never the

target. Blow was given when he had questioned the Applicant and his family.

14. Considering all these aspects, the learned counsel for the Applicant has made out a case for grant of bail during the pendency of the Appeal.

15. Hence, the following order :

**ORDER**

- (i) During pendency and final disposal of the Criminal Appeal No.1055 of 2024, the Applicant is directed to be released on bail on his furnishing P.R. bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand only), with one or two sureties in the like amount.
- (ii) Interim Application stands disposed of accordingly.

**(SARANG V. KOTWAL, J.)**