

Prasad Rajput

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 4757 OF 2024

1. Junaid Shoaib Shaikh and
 2. Noyab Sohail Shaikh.

.. Applicant

Versus

State Of Maharashtra and Anr.

.. Respondents

WITH

INTERIM APPLICATION NO.4862 OF 2024

IN

CRIMINAL BAIL APPLICATION NO. 4757 OF 2024

Arif Hafiz Khan

.. Applicant

Versus

State Of Maharashtra

.. Respondent

CRIMINAL BAIL APPLICATION NO. 1071 OF 2025

Aftab Shoeb Shaikh

.. Applicant

Versus

State Of Maharashtra

.. Respondent

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- Mr. Tushar Sonawane a/w Ms. Seema Dige, Advocate for Applicant in BA No.4757 of 2024.
- Mr. Tanmay Karmarkar a/w Mr. Sahil Khullar i/b Mr. Marmik Shah, Advocate for Applicant in BA No.1071 of 2025.
- Mr. A.K. Momin a/w Nikhat Momin, Advocates for Intervenor.
- Ms. Rajeshree V. Newton, APP for State in BA No.4757 of 2024.
- Mr. Dinesh J. Haldankar, APP for State in BA No.1071 of 2025.
- API - Rupchand Shere, Shantinagar Police Station, Bhiwandi.

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 04, 2025

P.C.:

1. Heard Mr. Sonawane, learned Advocate for Applicant in BA No.4757 of 2024; Mr. Karmarkar, learned Advocate for Applicant in BA No.1071 of 2025; Ms. Newton, learned APP for State in BA No.4757 of 2024 and Mr. Haldankar, learned APP for State in BA No.1071 of 2025.
2. This is a group of two Bail Applications being heard and decided together and Applicants are co-accused persons in the same crime.
3. Applicants - accused have filed the present Applications for regular bail in connection with Crime No. 952 of 2024 registered with Shanti Nagar Police Station, Bhiwandi, Thane for the offence punishable under Sections 307, 143, 147, 149 of the Indian Penal Code, 1860 (for short, "**IPC**"), Sections 4 and 25 of the Arms Act, 1959 and Sections 37(1) and 135 of the Maharashtra Police Act, 1951.
4. In Bail Application No.4757 of 2024 Applicants are original Accused No.1 - Junaid Shoaib Shaikh and Accused No.2 - Noyab Sohail Shaikh who are arrayed as accused Nos. 1 and 2 in the chargesheet subsequently. In Bail Application No.1071 of 2025 Applicant is Aftab Shoeb Shaikh who is arrayed as Accused No.7 in the present crime.

5. Incident in question occurred on 02.04.2024 between two families due to a dispute. Family members of Applicants before me first to lodge their FIR at about 03:44 AM whereas family of First Informant lodged their FIR on 16:00 hrs i.e. 04:00 PM on same day.

6. Allegation in both FIRs is with respect to assault made by deadly weapons by family members of either sides. First Informant has filed separate Intervention Applications in both the Bail Applications. Mr. Momin, learned Advocate has argued on behalf of Intervenor. He would submit that family of Applicants comprises of hardened criminals having several antecedents registered against them. He has placed on record 5 such antecedents against Applicants and some of their family members primarily under Section 324 and other allied provisions of IPC. He would submit that in view of two fatalities in the family of Applicants in the present offence Applicants are holding a grudge against family members of First Informant. He would fairly confirm that some family members of First Informant received grievous injuries in the said incident however there was no fatality. Hence, he would persuade the Court not to release Applicants on bail lest once they come out they would attempt to reoffend themselves by taking revenge on the family of First Informant. He would submit that because of what happened in the present crime, two months after the date of the present crime there was an assault carried out by some of

the family members of Applicant's family on family members of the First Informant thereby leading to filing of the complaint against them under Section 307 of the IPC. He would persuade the Court to consider apprehension of the First Informant about retaliation by Applicants if they are released on bail. He in his submissions therefore has referred to and relied upon certain citations namely case of the *Bhagwan Singh v. Dilip Kumar @of Deepu @Depak, 2023*¹ and *Kalyan Chandra Sarkar v. Rajesh Ranjan @Pappu Yadav*² and would submit that in the contextual facts of the present case keeping in mind the facts about the nature of accusations and severity of the crime involved, Court will have to exercise its discretion judiciously and not as a matter of course. He would persuade the Court to consider the decision in the case of *Ram Govind Upadhyay v. Sudarshan Singh*³ and would submit that causing of grievous injuries itself is a ground which cannot be disregarded by the Court for denying bail to the Applicants.

7. Learned APP has fairly informed the Court that in the present incident family members of both sides were seriously injured. He would inform the Court that injured members of families of both sides were separately admitted to IGM Hospital and Siraj Hospital for treatment where two family members of Applicant's family namely

¹SCC OnLine SC 1059

²(2004) 7 SCC 528

³(2002) 3 SCC 598;2002 SCC (CRI) 688

Zuber and Ishtiyak arraigned as co-accused in the present crime succumbed to their injuries during treatment and expired. Role of present Applicant in the crime as attributed to them is of assaulting some family members of First Informant with a wooden log. *Prima facie* this is a case of complaints and cross-complaints. Substantial injuries having been inflicted on members of both the sides. As delineated hereinabove cross FIRs have also been lodged. *Prima facie* role of Applicants before me is far less than the role of the principal Accused in the present crime. *Prima facie* it is seen that Accused No.4 is already granted Anticipatory Bail as also Accused No.6 despite their role even according to the prosecution case being far greater in significance than role of present Applicants before me.

8. The apprehension expressed by learned Advocate for First Informant can undoubtedly be taken care of by imposing appropriate conditions. In the present case there has been an equal rather opportunistic attack from the family members of First Informant also causing grievous injuries and 2 fatalities of Applicant's family and the fact that the First Informant himself being arraigned as principal accused in the same crime and being incarcerated in prison entails the Court to consider the case for bail of Applicants.

9. Considering aforesaid *prima facie* observations, both the Bail Applications are allowed subject to the following terms and conditions:-

(i) All 3 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) Applicants are permitted to furnish provisional cash bail of Rs.25,000/- for their release immediately and file undertaking that they will provide one or two sureties in the like amount of Rs.25,000/- within a period of four weeks after their release which shall be accepted by the Trial Court. Applicant shall provide sureties as directed;

(iii) Before their actual release from jail, Applicant shall furnish their address where they proposes to reside after their release from jail to the concerned Police Station and also to the trial Court;

(iv) After their release from jail, Applicants shall report to the Investigating Officer as and when called for;

(v) Applicants shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 01.00 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;

(vi) 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;

(vii) Applicants shall not leave the State of Maharashtra without prior permission of the Trial Court;

(viii) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner; and

(ix) 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.** Both the Bail Applications are allowed and disposed.

[MILIND N. JADHAV, J.]