

MHTH290014142024



Order below Ex.86 in Sessions Case No. 155/2024
(Arif Hafiz Khan vs. State of Maharashtra)

1] This is an application filed by applicant/accused namely Arif Hafiz Khan for seeking his release on bail.

2] Brief facts, which give rise to file the present application, are as under :

Complainant Sajid Shaikh filed FIR when he was admitted in ICU ward of Siraj Hospital, Bhiwandi. It is alleged that on 28.11.2023 at 4.30 p.m Hujafa Shaikh teased the daughter of Arif Khan at Wafa Complex Bhiwandi. At that regard there was quarrel and FIR No.939/2023 for offence under Section 307, 326 etc was registered at Shanti Nagar Police Station against maternal uncle of complainant, Juber, Junaid, Istiyaq, Abuzar and Hujafa etc. Hence, there was dispute in between complainant's maternal uncle and the complainant in C.R.No.939/2023.

3] On 02.04.2023 at 6.30 p.m complainant, his brother Sony, Asif were sleeping at their house. At that time he received phone call of his friend Mobin who told to complainant that some persons causing beatings to his maternal uncle. Hence,

complainant immediately rushed to KGN Chowk. There was crowd on that spot. Complainant noticed that Arif Khan, his brother Abid, Babulal, Fardin, Sadiq, Shafiq, Samir Shaikh etc were causing beatings to complainant's maternal uncle Juber, Ishtiyak, Noyab etc. Arif was having sword with him and Aasif Babulal, Fardin were possessing knives. Unknown persons were also having weapon and wooden stick. It is further alleged that Aasif, Munaf, Sadiq, Samit, Jishan were instigating to assailants to kill the witnesses.

4] When complainant went to rescue/intervene the incident at that time accused persons cause beatings to him also. Babulal assaulted to complainant by means of knife and accused assaulted by wooden stick. Complainant become unconscious on the spot. Then the injured and complainant were taken to hospital for their medical treatment. Then police recorded statement of complainant in hospital. On the basis of same this offence is registered. During investigation police arrested some accused. After obtaining their police custody they were remanded to judicial custody. At present, the applicant/accused is in jail.

5] Now by filing this application accused Arif Hafiz Khan seeking his release on bail. According to him he is no concerned with crime and he is falsely implicated. He further alleged that now investigation is completed and charge-sheet is also filed and hence his presence in custody is not necessary. He further alleged

that a counter case in respect of this matter is registered against complainant and other and in that matter the accused there in are on bail. He further alleged that some of the accused in this crime are on bail. He prays to allow the prayer on ground of parity.

6] Prosecution strongly resisted prayer by filing reply. According to prosecution in this incident there is murder of two persons. So also, there are other injureds who sustained grievous injuries in the incident. Prosecution further alleged that during investigation sufficient material is collected against this applicant to show his active participation in this crime. In this matter original complainant is also appeared and strongly resisted the prayer by filing written objection on record.

7] Heard Ld.Advocate of the applicant, Ld.APP and Ld. Advocate of original complainant. Perused charge-sheet.

8] Ld.Advocate of applicant submitted that counter cases in respect of this incidents are lodged by the parties. He submitted that complainant and others were caused beating to this accused and his family members. He submitted further that the applicant is young boy who is taking education in 2nd year of law. He submitted that some of the accused have been released on bail and in CCTV footage roll of this applicant is not noticed as assailant. According to him, this applicant committed the act on the spot as a right of private defence. He prays to allow the prayer

on the ground of parity.

9] Ld. Advocate of complainant submitted that two persons in family of complainant are dies due to the assault made by the accused. He submitted that there are various eye witnesses and 4 injured who noticed the applicant while committing and assault on the deceased and injured.

10] Ld. APP submitted that in investigation sufficient material is collected to show active participation of this accused in alleged murder.

11] Ld. Advocate of accused relied upon an information obtained regarding Junaid Shaikh who is complainant and submitted that he and his family members are habitual criminals. But, for deciding prayer of bail the said allegations are not useful in favour of applicant.

12] Ld advocate of accused further relied upon finding recorded by honorable offence court in the matter of **Laxman Pande vs State of UP (Criminal Appeal No. 1551/2021)** in that matter honorable high court rejected the bail to accused there in. but, honorable apex court allowed the prayer of bail. Those findings are based on different facts. Here, 2 persons from complainant family are died in the incident. Other persons are become injured. In FIR name of applicant is shown as one of

assailant and having possession of weapon. Hence, the findings recorded in above ruling are not applicable for the applicant.

13] On perusal of record it appears that the present matter is regarding double murder of family members of complainant family. On perusal of FIR it appears that name of this applicant is clearly mentioned as a person who possessed sword with him. Specific role of applicants mentioned in FIR as well as eye witnesses and injured also. There are various eye witnesses who stated the name of appellant as a person who present on the spot at the relevant time. Complainant and eye witnesses stated that at the relevant time this applicant was having sword with him.

14] No doubt, according to applicant he did the alleged act of intervening the quarrel for his private defence. But, those allegations of applicant required to be considered at the time of trial. Whether the applicant committed alleged act on the spot is really as a private defence or whether he is exceeded right of private defence? These aspects required to be considered at the time of trial itself. No doubt, other co-accused in this matter are released on bail. But, there role in this crime is different one. Hence, ground of parity is not applicable to the applicant.

15] Thus, in view of aforesaid discussions and considering investigation papers and role of this applicant I am of the view of prima-facie involvement of the applicant in alleged double

murder is established. Therefore, this is not fit case to use discretion in his favour. Hence, the following order:-

Order

1] Application stands rejected.

Bhiwandi.
10.12.2025

(N.L. Kale)
Additional Sessions Judge,
Bhiwandi.