

Sessions Case No. 21 of 2023**Accused No.(2) Akil Ahemad Mohammad Shubrati @ Papa*****Vs.***

The State of Maharashtra

ORDER BELOW EXH.13

[1] **Applicant/Accused No.(2) Akil Ahemad Mohammad Shubrati @ Papa** has filed this application for grant of bail under section **439** of the Code of Criminal Procedure.

Prosecution case in short is as follows :-

[2] Deceased Salman was the son of informant – Salim Ahmed Jabbar Ahmed. On 05.09.2022 at about 9.30 p.m., Salman had gone out of his house. Sometime, thereafter the informant made him phone call and inquired with him as to when he would be coming back. In reply, Salman stated that after sometime he would be coming back. Thereafter, on 06.09.2022 at about 00.45 hours Shaikh Najim Shaikh Bismilla, the friend of deceased – Salman made phone call to the informant and informed him that Salman was lying in injured condition near Shakil Hotel at Golden Nagar, Malegaon. Immediately, thereafter the informant went to the said spot and saw that Salman was lying there in pool of blood having

grievous injuries on his head, ribs and face. Salman was not having any movement. Thereafter, he came to know that at about 00.30 hours, persons by name – Tausiff Ahmed Raffiq Ahmed @ Raju and applicant/accused No.(2) - Akil Ahmed Mohammad Sugrati @ Papa came there and raised quarrel with Salman on account of previous dispute and both of them assaulted Salman by sharp weapons and fled away. Then, the informant with the help of some other persons took Salman to Civil Hospital, Malegaon. Doctors examined Salman and declared him to be dead.

[3] The informant lodged FIR about the incident. On the basis of said FIR, Crime vide C.R. No.I-171/2022 came to be registered. The applicant/accused No.(2) was arrested on **06.09.2022**. Now, he is in Judicial Custody. Therefore, the applicant/accused No.(2) has filed this application for grant of bail.

[4] On perusal of the material placed on the record, it appears that the Investigating Officer has recorded statement of one eye witness by name – Mahammad Sarvar Shaukat Ali. He states that on 06.09.2022 at about 12.15 a.m., he came to Shakil Hotel for Tea. At that time, he saw that accused Papa and Asif were holding hands of one person from his back side, whereas accused Raju assaulted that person by means of ***Koyata***.

[5] As per the order dated 23.08.2023 passed in the matter of Bail Application No. 861 of 2023, the Hon'ble High Court, Bombay, has granted bail to accused No.(3) – Shaikh Aasif. In Para Nos.4 and 6, the Hon'ble High Court observed thus. :-

“4. Learned APP relied upon the statement of the eye witness Mohammad Sarvar Shaukat Ali. The said statement was recorded on 18.09.2022. The role assigned to the applicant is that he was holding hand of the deceased while accused No.1 assaulting him. There is a delay in recording the statement dated 18.09.2022”.

“6. Considering the role of the applicant and the nature of the accusations and as the applicant is in custody since 07.09.2022 almost 11 months with the possibility of the trial commencing any time soon in the near future is remote, taking an overall view of the matter, I am inclined to enlarge the applicant on bail. There are no criminal antecedents reported against the applicant. The applicant does not appear to be a flight risk. The applicant can be released on bail by imposing stringent conditions. The investigation is complete. The charge-sheet has been filed”.

[6] Learned Advocate for the applicant/accused by placing reliance upon the authority – **Ramesh Iranna Bali Vs. State of Maharashtra – 2018 ALL MR (Criminal) 912 (S.C.)** submitted that as alleged by the prosecution, at the time of the incident, accused No.(2) Akil Ahemad @ Papa and accused No. (3) Shaikh Aasif were holding hands of the deceased from backside and accused No.1 – Taussif assaulted him by means of *Koyata*. As per the order dated 23.08.2023 passed by the

Hon'ble High Court, accused No.(3) – Shaikh Aasif has been granted bail. Role of accused No.3 – Shaikh Aasif and present accused No. (2) - Akil Ahemad @ Papa, is similar. Therefore, he is also entitled for grant of bail on the ground of parity.

[7] It is pertinent to note that in this case there is only one eye witness i.e. Mohammad Sarwar Shaukat Ali to the incident. He states that at the time of the incident, accused No. (2) – Akil Ahemad @ Papa and accused No. (3) Shaikh Aasif were holding hands of the deceased. Thus, accused No. (3) Shaikh Aasif and this accused No.(2) Akil Ahemad @ Papa have played similar role in commission of the offence. Since accused No. (3) Shaikh Aasif has been granted bail as mentioned above, this accused No. (2) Akil Ahemad @ Papa is also entitled for grant of bail on the ground of parity. In the result, the application deserves to be allowed. I, therefore, pass the following order. :-

ORDER

[1] Applicant /Accused **No.(2)Akil Ahemad Mohammad Shubrati @ Papa** be released on his executing P.R. Bond of Rs.50,000/- (Rs.Fifty Thousand only) with surety of like amount on conditions that :-

(a) he shall attend the Investigating Offier of **Pawar Wadi Police Station, Malegaon**, once in a month every **first Monday of the month between 11.00 a.m. and 1.00 p.m.**

(b) he shall not tamper with the prosecution evidence and shall co-operate with the police machinery as and when required.

(c) he shall produce on record proof of his permanent residence at the time of furnishing bail.

[2] Issue letter accordingly to the concerned police station.

Date : 04.10.2023

(S.B. Bahalkar)
Additional Sessions Judge,
Malegaon.

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