

**Sessions Case No. 21 of 2023**

The State of Maharashtra

*Vs.***Tauseef Ahmed Rafeeqe Ahmed  
@ Raju .. Accused No.1****ORDER BELOW EXH.32**

[1] **Applicant / Accused No.(1) Tauseef Ahmed Rafeeqe Ahmed @ Raju** 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 (the applicant/accused) and 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. Applicant/accused No.(1) – Taussif Ahemd Raffique Ahemd @ Raju was arrested on **06.09.2022**. Now, he is in Judicial Custody. Therefore, he has filed this application for grant of bail.

[4] On perusal of the material placed on the record, it appears that the informant is not an eye witness to the incident. His friend Shaikh Najim informed him that his son Salman was lying in injured condition. The Investigating Officer has recorded statement of said Shaikh Najim. He also states that he

came to know about the incident from some other persons. Thus, Shaikh Najim is also not an eye witness to the incident.

[5] It further 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 (the applicant) assaulted that person by means of *Koyata*.

[6] 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”.

[7] Learned Advocate for the applicant/accused submitted that there are total **three accused persons** in this case. Out of them, two co-accused have been granted bail. Therefore, present applicant/accused No.1 is also entitled for grant of bail on the ground of parity.

[8] 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.(2) Akil Ahemad @ Papa and this accused No.(3) Shaikh Aasif have played similar role in commission of the offence. Therefore, they were granted bail on the ground of parity.

[9] However, as per the eye witness, the present applicant / accused assaulted the deceased by **Koyata**. Post-mortem report shows that the deceased sustained as many as **9 incised wounds by** sharp weapon and he died due to the said injuries. Thus, the role of the present applicant/accused is much severe, serious and different than the role played by accused Nos. 2 and 3. Hence, the applicant/accused is not entitled for parity. On the contrary, material placed on the record, is

sufficient and cogent to believe that the applicant/accused has committed the offence as alleged by the prosecution. In the circumstances, filing of the charge-sheet cannot be the sole ground for grant of bail. In the result, the application deserves to be rejected. I, therefore, pass the following order. :-

**ORDER**

Application is hereby rejected.

**Sd/-xx**

**( S.B. Bahalkar )**

Additional Sessions Judge,  
Malegaon.

Date : 16.12.2023

.....