

**Bail Application in Sessions Case No. 175 of 2021**

The State of Maharashtra

Vs.

**Shaffique Ahmed Abdul Azij**

**Order below Exh.22**

[1] Applicant – **Shaffique Ahmed Abdul Azij** has filed this *third application* under section 439 of Code of Criminal Procedure for grant of bail in connection with C.R.No. I 51/2021 under section 302, 427, 506 and 212 read with section 34 of the IPC registered at Ayesha Nagar Police Station, Malegaon.

[2] It is main allegation that the accused persons including the applicant/accused No.5, in furtherance of their common intention, killed Anis. It is also alleged that the present applicant/accused provided weapons to other accused persons for commission of the crime.

[3] Learned Advocate for the applicant/accused submitted that as per the prosecution case, the applicant/accused was not present on the spot at the time of the incident. His name is not mentioned in the FIR. Previously, when investigation of the crime was in progress, the applicant/accused had filed Cri.Bail Application No.552.2021 which was rejected by this Court. Thereafter, investigation of the crime was completed and charge-sheet came to be filed. After filing of the charge-sheet, the applicant/accused preferred Second Bail Application No.621/2021 which was also came to be rejected by this Court on 06.12.2021.

[4] Learned Advocate for the applicant/accused further submitted that accused No.2 Mohd. Raza @ Shera and accused No.6 Abdul Rafe Rafique Ahmed against whom similar nature of allegations were made, have been granted bail by the Hon'ble High Court of Bombay. Hence, the applicant/accused is entitled for bail on the ground of parity. Lastly, he submitted that the applicant/accused is ready to abide all the terms and conditions which will be imposed by this Court. On these grounds, he prayed for grant of bail.

[5] On the other hand, learned APP submitted that no doubt, name of the applicant/accused is not mentioned in the FIR. However, FIR is not encyclopedia of the crime. During the investigation, it has been revealed that the applicant/accused provided weapons to other accused persons for commission of the crime. During the investigation, the Investigating Officer has collected CCTV footage showing that sometime before the incident, the applicant/accused handed-over few weapons to other accused persons. Thus, there is prima facie evidence to show the involvement of the applicant/accused in this crime. In the circumstances, mere filing of the charge-sheet cannot be the sole ground to grant bail to the applicant/accused. Role of the applicant/accused is different than the accused who have been granted bail by the Hon'ble High Court, Bombay. In the circumstances, rule of parity is not applicable in this case. On these grounds, he prayed for rejection of the application.

[6] It is part of the record that First Bail Application No.552/2021 was rejected on 22.10.2021 before filing of the charge-sheet and Second Bail Application No.621/2021 was rejected by this Court on 06.12.2021 after filing of the charge-sheet. In the circumstances, as settled position of law that it is necessary to consider as to whether there is change in circumstances to consider this successive bail application.

[7] The applicant/accused has produced on record copy of the order dated 12.07.2022 passed by the Hon'ble High Court, Bombay in Bail Application No. 200/2022. As per the said order, accused No.2 Mohammad Raza Rahees Ahmed has been granted bail by the Hon'ble High Court. In Para No.6 and 8 of the said order dated 12.07.2022, the Hon'ble High Court observed thus :-

6. First and foremost, it is imperative to note that Raees Ahmad, the brother of the deceased lodged the first information report on the basis of narration by his brother Farid Ahmad. Evidently, the first informant was not a witness to the occurrence. In the supplementary statement recorded on 6<sup>th</sup> August, 2021, the first informant, after the CCTV footages were shown to him, stated that the footages indicated that the deceased was caught hold of by co-accused Salman and Naeem, the friend of the assailant Ashfaq. The initial blow by means of knife given by the assailant Ashfaq was thwarted by the deceased by holding knife. Thereupon, the assailant Ashfaq asked the co-accused Naeem to handover the knife, which he was carrying, and unleashed the blows by the said knife on the stomach, hand and legs of the deceased. Even after the deceased fell down, Ashfaq gave the blows by means of knife in quick succession. Farid Ahmad who claimed to have witnessed the occurrence, also reiterated the aforesaid version in the supplementary statement recorded on 6<sup>th</sup> August, 2021.

8. The situation which thus obtains is that though the first informant alleged in the first information report that the applicant had killed the deceased, apparently on the basis of narration by is another brother Farid, yet in the supplementary statement both the first informant and his brother Faird have not attributed the said role to the applicant. In fact, the very presence of the applicant at the scene of occurrence prima facie does not seem to have been made out. The eye witnesses to the occurrence simply do not advert to the presence of the applicant at the scene of occurrence much less the role of assault.

[8] Similarly, the applicant/accused has produced on the record copy of the order dated 26.09.2022 passed by the Hon'ble High Court, Bombay in Cri.Bail Application No.193 of 2022 by which accused No.6 Abdul Rafe s/o. Rafeeqe Ahmed has been granted bail. Iin Para No.6, 7 and 8 of the said order, the Hon'ble High Court observed thus :-

6. The careful reading of the statements of aforesaid witnesses depicts that the role attributed to the applicant is that of providing medical aid and external support in the commission of crime. All the witnesses have referred to the applicant of aforesaid role based on hearsay evidence.

7. Apart from above, there is hardly any material on record to connect the applicant of actively participating in the crime in question.

8. The fact remains that Mohammad Raza Raees Ahmed who is ordered to be released by this Court on 12<sup>th</sup> July, 2022 was facing serious allegation as compared to present applicant. The case of the applicant is on better footing than that of Mohammad Raza Rahees Ahmed who is already released. As such, the present application also needs to be allowed.

[9] Considering the above observations made by their Lordships in the orders and the facts and circumstances of the case, it appears that the informant as well as other witnesses have referred to the applicant /accused of the aforesaid role

based on hearsay evidence. There is hardly any material on record to connect the applicant/accused No.5 of actively participating in this crime.

[10] Having regard to the above-mentioned facts and circumstances of the case, I am of the opinion that the applicant/accused No.5 is entitled for grant of bail on the ground of parity. In the result, the application deserves to be allowed. I, therefore, pass following order. :-

**ORDER**

[1] Applicant – **Shaffique Ahmed Abdul Azij**, be released on his executing P.R. Bond of Rs.30,000/- (Rs. Thirty Thousand only) with one or more sureties of like amount on conditions that :-

(a) the applicant shall attend Ayesha Nagar Police Station, Malegaon, Dist. Nashik, on **First Monday** of every alternate month in between 10.00 a.m. to 1.00 p.m., **for the period of one year or till framing of the charge**, whichever is earlier.

(b) the applicant/accused shall not tamper with the prosecution evidence in any manner and shall co-operate with the Investigating machinery as and when required.

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

[2] Inform the concerned police station.

**(S.B. Bahalkar)**

Additional Sessions Judge,  
Malegaon.

Date – 10.10.2022.