

Sessions Case No. 175 of 2021

The State of Maharashtra

Vs

Naeem Ahmed Jamal Ahmed**Order below Exh.74**

[1] Accused - **Naeem Ahmed Jamal Ahmed** has filed this ***Third*** application under section **439** of Code of Criminal Procedure for grant of bail.

[2] According to the prosecution case, the accused persons including Accused - Naeem Ahmed Jamal Ahmed, in furtherance of their common intention, killed Anis. It is also alleged that at the time of the incident, Accused - Naeem Ahmed was present on the spot alongwith other accused persons and he provided knife to accused Ashfaque when he assaulted deceased Anis.

[3] First Bail Application No. 639 of 2021 filed by accused Naeem Ahmed was rejected by this Court on 06.12.2021. Thereafter, the investigation is completed and the charge-sheet is filed. So also some of the accused persons have been granted bail by the Hon'ble High Court. Therefore, on the ground of change in circumstances and parity, Accused - Naeem Ahmed has filed Second Application (Exh.63) which was rejected by this Court on **10.03.2023**.

[4] Thereafter the applicant/accused filed Bail Application No. 1658 of 2023 before the Hon'ble High Court, Bombay. In the said bail application vide order dated 04.08.2023, the accused was permitted to withdraw the said application with liberty to apply before the Sessions Judge after one year. Now, the said period of one year has been lapsed. Therefore, the accused has filed this **third application for grant of bail.**

[5] I have heard both the sides and perused the material placed on the record.

[6] Learned Advocate for the accused submitted that the FIR is based on the hear-say information. On the basis of eye witness – Wasim which is recorded about one week after the incident, the accused has been falsely implicated in this crime. However, the accused has not played any role in the crime. He was not present there. He has not participated in the crime.

[7] Learned Advocate for the accused further submitted that even if the CCTV Footage are considered, the same are not sufficient to establish that in those three persons allegedly assaulting one man, the accused is present, because his face is seen clearly. Therefore, on the basis of such CCTV Footage, it cannot be assumed that the accused was present there.

[8] Learned Advocate for the accused further submitted that for a moment, even if it is assumed that the accused is seen in the said CCTV Footage, it appears that the accused has not assaulted the deceased with any weapon. He has only handed over the knife to accused Ashpaque. Therefore, considering the role attributed to the present accused, he is entitled for grant of bail.

[9] Lastly, learned Advocate for the accused submitted that the investigation of the crime is completed and the charge-sheet is filed. The accused was arrested on **31.07.2021**. Since then, he is in Jail. After withdrawing bail application No.1658 of 2023, there is no progress in this matter, even though, one year has been lapsed. The accused has right of speedy trial. Since there is no progress in the proceedings, the accused is entitled for bail. So also other accused persons have been granted bail by the Hon'ble High Court. Hence, this accused is also entitled for bail on the ground of parity. In support of his argument, he relied upon the case laws :-

(1) Sachin Atmaram Vartak Vs. The State of Maharashtra – Bail Application No. 430 of 2021 – decided by the Hon'ble High Court of Bombay on 05.01.2022.

(2) Sandeep Singh @ Sonu Vs. State of Punjab – (CRM-M-34488-2022(O & M) date of decision 23.11.2022.

(3) Balvir Ram Vs. State of Punjab (CRM-M-31856-2020(O & M) date of decision 29.11.2022.

In the above Judgments, the Hon'ble High Courts have granted bail to the concerned accused persons by using powers under Article 21 of the Constitution of India.

[10] On the other hand, the learned APP submitted that during the investigation the Investigating Officer collected CCTV footage, wherein it revealed that this accused was present on the spot at the time of the incident alongwith other accused persons and he provided knife to accused Ashfaque for assaulting deceased Anis. Thus, there is ample material on record to show the involvement of the accused Naeem Ahemad in this crime. Therefore, he may not be granted bail.

[11] On going through the material placed on record, it appears that during the investigation, the Investigating Officer recorded statements of witness – Wasim. He is an eye witness to the incident. He states that when accused Ashfaque was assaulting Anis by knife, he (Anis) caught hold the said knife. Therefore, Anis sustained bleeding injury on his palm. At that time, accused Ashfaque asked the present accused that "*Naeem Tere Pas Ka Chaku De*". (Naeem give knife which is kept with you.) Then, accused Naeem gave another knife to Ashfaque and then Ashfaque inflicted many stabs on the stomach of Anis by knife.

[12] It is pertinent to note that at the time of hearing of Bail application (Exh.63) filed by the present accused, the Investigating Officer supplied three CCTV Footage in the form of Pen-drive to the accused.

[13] At the time of hearing of Bail application (Exh.63), the CCTV Footage were being displayed in the Court Hall, the Investigating Officer pointed out one particular person wearing white shirt to be accused Naeem Ahemad. The Investigating Officer being the Master of the investigation, is the right person who can point out particular accused seen in the CCTV Footage.

[14] It was also seen from the said CCTV Footage that due to blows of knife, the deceased sustained injuries and he collapsed. It was also seen from the CCTV Footage that at that time, accused Naeem Ahemad and accused Salman were providing cover Ashfaque.

[15] Thus, there is prima facie direct evidence showing the involvement of accused Naeem Ahemad in this crime. Moreover, CCTV Footage shows that accused Naeem Ahemad not only supplied knife to Ashpaque but also he was providing cover to accused Ashpaque and at that time, he was holding knife in his hand and waiting for chance to assault the deceased. Moreover, role played by accused Naeem Ahemad is much severe and different that the accused persons, who have been granted bail. Hence, accused Naeem Ahemad is not entitled for

parity. Thus, it appears that the accused Naeem Ahemad is equally responsible for causing the death of Anis. In the circumstances, filing of charge-sheet itself cannot be the sole ground for grant of bail. Therefore, if the accused is released on bail, possibility of his absconding and tampering with the prosecution evidence cannot be rule out.

[16] So far as grant of bail to the accused for non completion of the trial within last one year, is concerned, it is necessary to mention that in the authorities cited on behalf of the accused, the Hon'ble High Courts have granted bail to the accused by using powers under Article 21 of the Constitution of India. However, this being the Sessions Court, is not empowered to use powers under Article 21 of the Constitution of India.

[17] Having regard to the above-mentioned facts and circumstances of the case, I am of the opinion that it would not be just and proper to grant bail to accused Naeem Ahemad. In the result, the application deserves to be rejected. I, therefore, pass following order. :-

ORDER

Application is rejected.

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

Date 09.09.2024