

Arjun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.3503 OF 2023

Kazim Sadik Shaikh

...Applicant

Versus

The State of Maharashtra

...Respondent

Ms. Trupti Khamkar, Amicus Curiae, for the Applicant.

Ms. Savita M. Yadav, APP, for the Respondent-State.

A.P.I., Priyanka Kharatmal, Rabale MIDC Police Station,
present.

CORAM : MADHAV J. JAMDAR, J.

DATED : MARCH 01, 2024

P.C.:

1. Heard Ms. Khamkar, learned Counsel appointed to represent the Applicant and Ms. Yadav, learned APP appearing for the Respondent-State.

2. This regular Bail Application is preferred under Section 439 of the *Code of Criminal Procedure, 1973*. The relevant details are as follows:-

1	C. R. No.	230 of 2016
2	Date of registration of F.I.R.	30/07/2016
3	Name of Police Station	Rabale MIDC Police Station, District-Thane
4	Section/s invoked	302, 201, 506(2) of the <i>I.P.C., 1860</i>

5	Date of incident	26/07/2016-28/07/2016
6	Date of arrest	05/08/2016
7	Date of filing Charge-sheet	02/11/2016

3. This Criminal Bail Application is preferred by the Applicant through jail on 31st August 2023 and the same has been received by the Registry on 14th September 2023. It was placed before this Court for the first time on 27th February 2024 and on that date this Court appointed Ms. Trupti Khamkar, learned Counsel to represent the Applicant and directed learned APP to produce the Charge-sheet and other relevant documents before this Court.

4. Ms. Khamkar, learned Counsel appointed to represent the Applicant submitted that the Applicant is incarcerated since 5th August 2016 i.e. for more than 7 years and 8 months. She pointed out paragraph No.4 of the Bail Application filed through jail which states that although the charge has been framed on 13th March 2018, only one witness has been examined. She submitted that the Applicant was arrested on 5th August 2016 and till date the trial has not concluded. She also submitted that from the copy of the Charge-sheet which has been produced by learned APP and the statements recorded during investigation, the same shows that the incident happened due to a quarrel between the Applicant and his wife and during the said quarrel the Applicant suddenly pushed the deceased into a gutter. She submitted that

there are no eye-witnesses to the incident and this is a case of circumstantial evidence.

5. On the other hand, Ms. Yadav, learned APP strongly opposed the Bail Application. She submitted that there are many incriminating circumstances showing that the Applicant is involved in the commission of the offence in question. She pointed out statements of various witnesses including the daughter of the deceased and certain other witnesses.

6. However, perusal of the record shows that the incident in question has taken place on 27th July 2016. The offence was registered on 30th July 2016. The Applicant was arrested on 5th August 2016. The Charge-sheet has been filed on 2nd November 2016. Till date, the trial has not been concluded.

7. The statements annexed to the Charge-sheet also show that the deceased is the wife of the Applicant and that at the relevant time an altercation occurred between the Applicant and deceased. As per the prosecution case, the Applicant has thrown the deceased in a gutter. *Prima facie* the incident took place when the Applicant and his wife were quarreling with each other.

8. In any case, the Applicant is incarcerated for about 7 years and 8 months. Accordingly, the Applicant is entitled to be released on bail. The trial is likely to take a considerably long time.

- 9.** The Applicant does not have any criminal antecedents.
- 10.** The Applicant does not appear to be at risk of flight.
- 11.** Accordingly, the Applicant can be enlarged on bail by imposing conditions. In view thereof, the following order:-

ORDER

- (a) The Applicant-Kazim Sadik Shaikh be released on bail in connection with C.R. No.230 of 2016 registered with the Rabale MIDC Police Station, District-Thane on his furnishing P.R. Bond of Rs.5,000/- with one or two sureties in the like amount.
- (b) The Applicant is permitted to give cash surety in lieu of surety for a period of two months.
- (c) On being released on bail, the Applicant shall furnish his cell phone number and residential address to the Investigating Officer and shall keep the same updated, in case of any change thereto.
- (d) The Applicant shall report to the Rabale MIDC Police Station, District-Thane once in a week i.e. on every Sunday between 11.00 a.m. and 1.00 p.m. until the conclusion of the trial.
- (e) The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade such a person from disclosing the facts to the Court or to any Police personnel.
- (f) The Applicant shall not tamper with the prosecution evidence and shall not contact or influence the Complainant or any witness in any manner.

- (g) The Applicant shall attend the trial regularly. The Applicant shall co-operate with the Trial Court and shall not seek unnecessary adjournments thereat.
- (h) The Applicant shall surrender his passport, if any, to the Investigating Officer.

12. The Bail Application is disposed of accordingly.

13. It is clarified that the observations made herein are *prima facie* and the trial Court shall decide the case on its merits and uninfluenced by the observations made in this Order.

14. This Court places on record the appreciation for the assistance rendered by Ms. Trupti Khamkar, learned Counsel appointed to represent the interests of the Applicant. The High Court Legal Services Committee, Mumbai to pay professional fees to her as per rules.

[MADHAV J. JAMDAR, J.]