

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO. 2304 OF 2015
IN
CRIMINAL APPEAL NO.390 OF 2015**

- 1) Mustafa Babu Mogare,
Age-60 years, Occu:Labour,
- 2) Rashid Amin Pathan,
Age-50 years, Occu:Labour,
- 3) Siraj Mattu Pathan,
Age-37 years, Occu:Labour,

All R/o-Pethsangvi,
Tq-Omerga, Dist-Osmanabad.

...APPLICANT

(Ori. Accused Nos.6, 7 and 9)

VERSUS

The State of Maharashtra

...RESPONDENT

...

Mr.Sachin S. Salgar Advocate for Applicants.
Mr.V.D. Godbharle, A.P.P. for Respondent.

...

WITH

**CRIMINAL APPLICATION NO. 2177 OF 2015
IN
CRIMINAL APPEAL NO.379 OF 2015**

Sayyad Miyalal Pathan,
Age-39 years, Occu:Labour,
R/o-Pethsavangi, Tq-Omerga,
Dist-Osmanabad.

...APPLICANT

(Ori. Accused No.1)

VERSUS

The State of Maharashtra

...RESPONDENT

...

Mr.Naseem R. Shaikh Advocate for Applicant.
Mr.V.D. Godbharle, A.P.P. for Respondent.

...

WITH

**CRIMINAL APPLICATION NO. 2023 OF 2015
IN
CRIMINAL APPEAL NO.360 OF 2015**

Taher Maheboob Shaikh,
Age-43 years,
R/o-Pethsangvi, Tq-Omerga,
Dist-Osmanabad.

...APPLICANT

(Ori. Accused No.11)

VERSUS

The State of Maharashtra,
Through In-charge Police Station/
Investigating Officer, Mr. Rajkumar
Asstt. S.P. Sub-Division, Omerga,
Tq-Omerga, Dist-Osmanabad.

...RESPONDENT

...

Mr.V.D. Sapkal Advocate for Applicant.
Mr.V.D. Godbharle, A.P.P. for Respondent.

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**CORAM: S.S. SHINDE AND
A.I.S. CHEEMA, JJ.**

DATE : 29TH JULY, 2015

ORDER :

1. Heard learned counsel appearing for the respective Appellants/Applicants and learned A.P.P. for State.

2. The learned counsel appearing for the Applicants in Criminal Application No.2304 of 2015 submits that the Applicant Nos. 1 and 2 are old age persons. The Applicants were on bail during the pendency of trial. He further submits that the evidence of PW-2 is not reliable. The deceased was taken to the hospital after two hours of the incident. Therefore, the counsel submits that the Applicants are entitled for bail.

3. Learned counsel appearing for the Applicants in Criminal Application No.2177 of 2015 submits that the trial Court has disbelieved the evidence of PW-4. In fact PW-2 and PW-6 came to know about the incident from PW-4. It is further submitted that merely because PW-2 is injured, is

no ground to accept his evidence. He further submits that if the medical evidence and evidence of the eye witnesses is considered, there is variance and therefore entire prosecution case deserves to be disbelieved.

4. The learned counsel appearing for the Applicant in Criminal Application No.2023 of 2015 submits that the name of the Applicant i.e. original accused No.11 was not mentioned in the FIR. First time he was named in the Court. His involvement is only by way of omission. The counsel further submits that there is no any overt-act attributed to the Applicant so far as main incident is concerned. No any specific overt-act is attributed to the Applicant. The counsel submits that even if the entire prosecution case is considered, the evidence as against the Applicant is first time before the Court, therefore the Applicant is entitled for bail. He further submits that during the trial, the

Applicant was on bail.

5. Learned A.P.P. appearing for State, relying upon the evidence of prosecution witnesses and the findings recorded by the trial Court, submits that Applications for bail deserve to be rejected.

6. We have given careful consideration to the submissions of the learned counsel appearing for the respective Applicants. With their able assistance, we have perused the notes of evidence, particularly evidence of PW-2, PW-4 and PW-6. It appears that PW-2 is injured witness. The trial Court considered the evidence of PW-2, and PW-6 and their evidence is discussed in Para 37 of the impugned Judgment. Apart from the conviction of the Appellants/Applicants for the offence punishable under Section 302, the prosecution invoked Section 143, 148 read with Section 147 of the Indian Penal Code and the trial Court also

convicted the Accused Nos.1, 6, 7, 9 and 11 for the offence punishable under Section 143, 148 read with Section 147 and 307, 302 read with Section 149 of the Indian Penal Code. The contention of the counsel appearing for the Appellants that to invoke or attract the provisions of Section 143, 147, 148, 149 of the Indian Penal Code, there should be object of unlawful assembly and in furtherance of said object the prosecution should establish that assembly was unlawful and its object was to commit the offence, however, in the facts of the present case, no such evidence is brought on record. In that respect, it can safely be observed that even the intention of the unlawful assembly can be formed at the spur of moment and it is not necessary, like the offence under Section 120-B of the Indian Penal Code, that there should be special deliberation for such commission of offence. Upon considering the evidence on record prima facie, findings recorded by the trial Court appears to be sustainable. PW-2

is injured witness. Provisions of Section 143, 147, 148, 149 of the Indian Penal Code are invoked. Each of these member of unlawful assembly, irrespective of the overt-act attributed to the said members, is equally responsible.

7. In that view of the matter, Applications are devoid of any merits. All the Applications stand rejected.

8. It is made clear that the observations made herein above are prima facie in nature for the purpose of deciding the present Bail Applications.

9. Registry of this Court shall send the original Record and Proceedings to the Registry of Sessions Court, Omerga. Upon receiving the original Record and Proceedings by the Registry of Sessions Court, the Registry of concerned Court shall prepare the Paper-Book and send it back

along with original Record and Proceedings, as expeditiously as possible, however in any case within four months from today.

[A.I.S.CHEEMA, J.]

asb/JUL15

[S.S.SHINDE, J.]