

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 6705 OF 2014
WITH
CRIMINAL APPLICATION NO. 53 OF 2015

Rauf Khan s/o. Wahab Khan Patel**Applicant.**

Versus

The State of Maharashtra**Respondents.**

Mr. N.S. Ghanekar, Advocate for applicant.

Mr. R.P. Phatke, APP for State.

Mr. Z.Z. Quadri h/f. Mr. Khizer Patel, Advocate for assisting APP.

CORAM : T.V. NALAWADE, J.
DATED : 7th January, 2015.

ORDER :

1. The application is filed for bail. Both the sides are heard. This Court has gone through the papers of investigation. The learned counsel for the applicant has made a statement that this is the first application filed for bail in this Court and no other application was filed in Supreme Court.

2. The crime is registered on the basis of report given by one Javed Kureshi. There is some land dispute in respect of land Gat No. 20 situated in Nagapur between the applicant and family of Javed. A civil suit was filed by one Jamil in respect of

the property against Suleman Tade and civil court had granted decree of permanent injunction in his favour. This property was sold by Jamil and others co-owners to three persons and those three persons had given power of attorney to present applicant in respect of disputed property. A statement was made by the learned counsel for the applicant that from those three persons the property was purchased by the present applicant and on the date of incident, the applicant was owner of the property.

3. In the report, the complainant has made allegations that on the day of incident, the applicant picked up quarrel with him and he was in the company of 3-4 associates. He was thinking that the sheep and goats causing damage to crop were belonging to the complainant and the applicant was present in his field. Allegations are made that after starting of the quarrel, first the weapon like pieces of bricks were used and after that other persons like Jakir Majid Kureshi, Allabaksh Kureshi and Shakeel came there, they tried to settle the dispute. Allegations are made that present applicant then took out his pistol and after aiming the pistol at chest of complainant, fired bullets. He has contended that out of fear, he held the hand of the applicant and due to that the bullet aimed by applicant missed the aim, hit to one Sajju Shabbir and this bullet caused injury to his right

hand finger and then hit on right thigh. It is contended that some persons gathered there and then they gave beating to present applicant and his driver. The crime was registered for offences punishable under sections 307, 323, 34 etc. of I.P.C. and section 4 and 27 of Arms Act at C.R. No. 160/2014.

4. In respect of the same incident, present applicant gave F.I.R. and he made allegations that in aforesaid disputed field, when he was present, the complainant and others (10 persons) came there and they were holding weapons like sword, Gupti, knife and they started quarrel. He contended that they gave threat of life and then they assaulted him by using sword. He contended that only in defence he fired bullets 3 to 4 times by using revolver.

5. There is injury certificate in respect of Sajju Shabbir, who sustained bullet injury and it shows that he sustained injury to right thigh showing that there was entry wound and exit wound. He sustained one C.L.W. over right middle finger. The submissions made show that the person with whom the applicant had dispute did not sustain any injury. However, names of Suleman Tade and his two sons were taken by the applicant in the F.I.R. Copy of the spot panchanama shows that incident took

place in land Gat No.20.

6. The learned counsel for the applicant placed reliance on some orders made in favour of his side by civil Court and also by Executive Magistrate in a proceeding started under section 145 of Cr.P.C. There was decree of permanent injunction in favour of the side of applicant. This decree was set aside after 11 years in the first appeal, but stay is given to the decree of the first appeal in second appeal by this Court by observing that the relief of permanent injunction was there in favour of the plaintiff for about 11 years and in view of that relief, order which was in existence for 11 years is maintained and accordingly, statusquo is granted by this Court. This order was made on 27.7.2012 by this Court. Copy of the order made by Executive Magistrate in the year 2009 shows that the Executive Magistrate formed opinion that protection needs to be given to the side of present applicant as they were in possession and liberty was given to them to apply to police for police protection. Thus, apparently, the side of the applicant was in possession of the disputed portion and incident took place in the disputed portion. The submissions made show that the licence for revolver was issued in favour of applicant.

7. The applicant has been behind bars since 19.11.2014. In view of the aforesaid circumstances and particularly, the orders made by the civil Court in favour of the side of applicant, this Court holds that it is not desirable to keep the applicant behind bars till the disposal of the case.

8. In the result, the application is allowed. The applicant is to be released on bail on his furnishing PR and SB of Rs. 15,000/- (Rupees fifteen thousand). He is not to tamper the prosecution witnesses. He is not to commit similar offence.

9. The application filed for assisting the learned APP is allowed and disposed of.

[T.V. NALAWADE, J.]

ssc/