

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1152 OF 2015
with
CRIMINAL APPLICATION NO.549 OF 2015

1) Mahesh Devidas Patil
2) Kailash Devidas Patil ... Applicants

Vs.

The State of Maharashtra ... Respondent

Mr.A.P. Mundargi, Sr.Adv. i/b N.N. Patil for the Applicants
Ms.Veera Shinde, APP, for Respondent – State
Mr.M.S. Mohite, i/b P.A. Borade for Intervener in APPP/549/2015

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **JULY 21, 2015**

P.C.:

1. The applicants/accused are facing charges under sections 307, 324, 143, 144, 147, 148, 149, 323, 504, 506 r/w section 34 of the Indian Penal Code and sections 37(1) and 135 of the Mumbai Police Act. The incident of assault has taken place on 8.1.2015 between 9.30 pm to 10.30 pm. One Pradeep Ramdas Patil gave information to the police that he started a business of money transfer from 28.12.2014. The applicant/accused Kailash was also in the same business and, therefore, he did not like it and had therefore abused him earlier on the same day i.e., 8.1.2015. He had entered the shop of the complainant and threatened him. On the same day, at night, at around 10pm, Kailash with the co-accused Mahesh

Patil and other co-accused arrived in front of the shop of the complainant. They were all armed with weapons like iron rod, iron pipe, sickle and assaulted the complainant and his brothers and friends who were present there. In the assault, overall, six persons suffered injuries of different nature. Hence, thereafter on his complaint, the offence was registered at C.R. No.3 of 2015 at Taloja police station, Taluka Panvel. The applicant/accused Kailash was arrested on 10.1.2015 and Mahesh was arrested on 21.1.2015.

2. The learned Senior Counsel appearing for the applicants/accused submitted that in the alleged assault, overall 8 persons are arrested and they are accused. He submitted that earlier two accused Devidas and Gorakshnath were granted bail by this Court on 17.6.2015. He submitted that considering the role attributed to Kailash and Mahesh, on parity, this application is also to be considered, positively. He read over the complaint i.e., the FIR so also the statements of Sagar Patil, who claimed to be injured accused. He also read over the statement of Kisan Patil, Pravin, Vasant who claimed to be assaulted by Kailash. He relied on the injury certificates and submitted that Vasant, Kisan, Sagar and Praveen have sustained simple injuries. However, the medico legal certificate issued by the private hospital are also produced and it appears that some of them like Vasant and Kisan have sustained fracture. He further submitted that

the applicants/accused have also filed a cross complaint in respect of the same incident, which is registered with the same police station at C.R. No.I-09 of 2015 on 20.1.2015. He submitted that in this case, Mahesh was also injured and has suffered one incise wound. He submitted that there was a free fight between the two groups. Under such circumstances, he submitted that the applicants/accused are to be bailed out.

3. The learned Prosecutor as also the learned Counsel appearing for the Intervener have opposed this application. It was argued that it was a free fight but the applicants/accused alongwith the other accused arrived infront of the shop of the complainant and assaulted the complainant and his brothers and friends. Six persons were injured and some of them suffered grievous injuries. It was argued by the learned Counsel for the Interevener that the case of Kailash stands on different footing. Kailash was having animus against the complainant due to the business competition. He had on the same day, at around 11.30am, abused the complainant and threatened the complainant and N.C. was registered. Though the police have warned him on the same night, irrespective of that warning, he attacked the complainant. Under such circumstances, it is to be rejected.

4. Perused the FIR. So also the statements of the witnesses which are relied on by the defendants as well as the prosecution. Also perused the injury certificates issued by Primary Health Centre as well as private hospital. On query, it is found that there are no criminal antecedents against the applicants/accused. *Prima facie*, it appears that the persons from both the parties have been injured. Though the applicants/accused and the other accused were aggressive and they arrived armed with weapons, considering the nature of the injuries and as this Court has already granted bail on 17.6.2015 to the co-accused, who were attributed similar role, on parity, I am inclined to grant bail to both the accused. However, as mentioned by the prosecution and the learned Counsel for the Intervener that it was Kailash, who took initiative to start the quarrel and as *prima facie*, it appears to be so, the applicant/accused Kailash Patil is granted bail with stricter conditions as follows:

- i) The applicant/accused Mahesh Devidas Patil shall be released on bail upon furnishing P.R. Bond in the sum of Rs.25,000/-, with one or two sureties in the like amount;
- ii) The applicant/accused Kailash Devidas Patil shall be released on bail upon furnishing P.R. Bond in the sum of Rs.50,000/-, with one or two sureties in the like amount;

iii) The applicants shall not tamper with the evidence and shall not indulge into any kind of offence while on bail;

iv) The applicant Mahesh Patil shall not enter the village Tondre in Taluka Panvel, District Raigad till 16th August, 2015 whereas the applicant Kailash Patil shall not enter the village till 30th September, 2015;

v) The applicants shall cooperate with the Investigating Officer and attend on all the Court dates.

5. Bail application is disposed of on the above terms.

6. In view of the above, Criminal application for intervention also stands disposed of.

(MRS.MRIDULA BHATKAR, J.)