

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

CRIMINAL APPLICATION [BA] NO. 16 OF 2015

SHAIKH FAIM S/O SHEIKH GAFFUR

VERSUS

STATE OF MAH., THRU. P.S.O., P.S., RAMDASPETH, AKOLA

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. Anil S. Mardikar, Senior Advocate with Mr. Nitin Tekade,
Advocate for the applicant.
Mr. M. J. Khan, Addl.P.P. for the non-applicant/State.
Mr. R. J. Mirza, Advocate for the Intervener.

CORAM : PRASANNA B. VARALE, J

DATE : MARCH 10, 2015.

Heard.

The applicant is before this Court seeking his enlargement on bail in connection with Crime No. 92/2014 registered with Police Station, Ramdaspath, Akola for the offences punishable under Sections 143, 147, 148, 149, 307, 302, 504, 109 of the Indian Penal Code, Section 4/25 of the Arms Act and Section 135 of Bombay Police Act.

Mr. Mardikar, learned senior counsel for the applicant submitted that the applicant, whose arrest was effected on 20.06.2016 in the said crime, is behind the bars since then. The learned senior counsel invited my attention to the report lodged at the instance of complainant namely Shaikh Salim Shaikh Burhan on 25.06.2014.

The sum and substance of the report is on

24.06.2014 at about 11.45 pm, while the complainant Shaikh Salim, his brother Shaikh Akram and one Mabba Pahelwan were chit-chatting, the present applicant, Shaikh Sajid, Shaikh Sultan, Sk.Sultan Sk. Yasin, Sk. Rashid Sk.Sultan, Arif, Sk.Naim and Sk.Faim, on account of old enmity, started abusing. Sk.Sultan instigated his associates by saying finish these people. Sk.Sajid gave a knife blow on the right thigh and left arm of the informant/complainant. When brother of the complainant namely Sk.Akram tried to intervene, Sk.Rashid and Arif gave blow with sharp edged weapon. When Mabba Pahelwan, Sk.Maheboob and Sk. Ali made an attempt to intervene in the quarrel, Sk.Naim, Sk.Gaffur and the applicant gave knife blows and caused injury to the brother of the informant Sk.Akram as well as to Mabba pahelwan. On raising hue and cry, local residents rushed to the spot. One Narayan and Shaikh Mahboob shifted the informant and his brother Sk.Akram initially to Civil Hospital at Akola and subsequently at a private hospital. Injured Mabba pahelwan was admitted in a private hospital namely Sahara Hospital.

Mr. Mardikar, the learned senior counsel for the applicant submitted that the investigating agency was set in motion and by effecting necessary steps in investigation, the investigation is concluded in filing of the charge-sheet. The

learned senior counsel, by inviting my attention to the material reflected in the charge-sheet submitted that the story of the prosecution is full of variance on the material aspects reflected in the statements of the so called witnesses. Learned senior counsel further submitted that the accused namely Sk.Farid and Sk. Sultan, who were also similarly circumstanced with the applicant, are enlarged on bail. He submitted that the complainant Sk. Salim, who claims to be an injured eye-witness and also claims that Mabba pahelwan, who was along with him since beginning and also was seriously injured, the version of these witnesses gives us the different story in each version. Learned senior counsel submitted that on one hand the informant/complainant states that the applicant was carrying a sharp edged weapon and laid an assault on Mabba Pahelwan, whereas the statement of Maheboob Khan @ Mabba, recorded on the very day, reveals that the applicant gave blow of an iron rod to him. Learned senior counsel further submitted that according to the complainant, the applicant was carrying knife, whereas Mabba pahelwan states that the applicant was carrying in his hand sword as well as knife.

The learned senior counsel then invited my attention to the statement of father of Shaikh Ali, who is also one of the injured witnesses. Perusal of the statement of Shaikh Mehboob shows that he

had received an information of the assault and he rushed to the spot along with his son Shaikh Ali. He states that on reaching the spot, he found that Sk.Akram was subjected to assault by Sk.Rashid, Sk.Naim and Sk.Gaffur. He states that the assailants were carrying sword and knife. Then he states about the role played by the applicant. He states that the applicant who was carrying knife in his hand, gave blow on his hand, but he was successful in saving himself from that blow on hand and it landed on the left leg. He further submits that when his son intervened in the assault, the applicant gave a blow by iron rod.

Learned senior counsel then invited my attention to the statements of Mohd. Badruddin and Narayan Dalvi. As per the version of Mohd. Badruddin, when Mabba pahelwan intervened in the quarrel, the applicant gave knife blow on the neck of Mabba pahelwan. The statement of Narayan Dalvi makes general statements against accused persons stating that the accused were carrying knife, sword and iron rods. He further states that the applicant gave blow to Mabba pahelwan with knife on neck.

Learned senior counsel further submits that it is the case of the prosecution that Sk.Akram Sk.Burhan, who had received multiple injuries died due to said injuries. Learned senior counsel submitted that in the statements of witnesses and the injured witnesses, no role is attributed to the

applicant in assault on deceased Sk.Akram, but a general statement was made that role of the applicant is attributed to assault on the informant Sk.Salim and Mabba pahelwan. Learned senior counsel submits that on the backdrop of the fact that the injured witness Mabba pahelwan himself is not stating that the applicant gave blow with any sharp edged weapon and he states that the applicant gave blow by iron rod, the version of other alleged eye-witnesses becomes doubtful.

The learned senior counsel then invited my attention to the medico-legal certificate issued to Mabba pahelwan, dated 04.09.2014. He submitted that the certificate refers to cause of injury as history of assault by unknown people by weapons. Learned senior counsel then submits that though the prosecution claims recovery of knife and iron rod at the instance of the applicant, this recovery is also doubtful. Learned senior counsel invited my attention to the memorandum panchanama and recovery panchanama under Section 27 of the Evidence Act. A copy of the same finds place in the copy of charge-sheet placed on record. It was the submission of the learned senior counsel by referring to these panchanamas that the prosecution alleges recovery of knife and iron rod at the instance of the applicant on 28.06.2014 and the timing is from 13.30 to 13.35 Hrs., whereas the recovery at the instance of Sk. Naim, Sk.Aarif and Sk.Sajid is dated 28.06.2014. The learned

senior counsel submitted that for all these recoveries, the prosecution sought help of same panchas and same police staff. Learned senior counsel submitted that the prosecution claims recovery of motorcycle at the instance of accused Sk. Rashid on 05.07.2014 at about 11.55 a.m. Learned senior counsel submits that even for this recovery panchanama, the same set of panchas and the police staff was utilized.

The submission of learned senior counsel for the applicant is as the material against the applicant is insufficient and raises an element of suspicion, the prosecution may hardly establish any case against the applicant as alleged and even assuming some mischief against the applicant, though not admitting, the same would at the most attract the offence under Section 323 and not under section 302 of the Indian Penal Code. The learned senior counsel submits that as the investigation is complete and charge-sheet is filed, the applicant, who has been arrested on the very next day of the incident and is behind the bars for more than 7-8 months, his further detention is not justified.

Learned Additional Public Prosecutor for the State vehemently opposes the application. It is the submission of learned APP that this Court at this stage is not expected to assess the material collected by the prosecution agency and such an exercise would be possible at the stage of trial. He

further submitted that the presence of the applicant, who was armed with weapons and actively participated in the assault on victim Sk. Akram as well as on other injured witnesses is clearly established. He, therefore, prayed for rejection of the application.

On the backdrop of the rival contentions of the learned senior counsel for the applicant and learned APP for the State, I have gone through the material placed on record. Though, learned APP was justified in submitting that assessment of the material is an exercise to be undertaken at the stage of trial, on a perusal of the material on the face of statements of so called witnesses, I find variance on the material aspects of the assault as well as weapons allegedly carried and used by the applicant. Learned senior counsel for the applicant, though submitted that the panchanamas carried out by the prosecution agency shows the same set of panchas and police officials, in my opinion this aspect may not be necessary to be gone into at this stage. There is considerable merit in the submission of learned senior counsel for the applicant that when the injured witness Mabba pahelwan himself gives different version of the assault, the weapon used and the role played by the applicant, the evidence of the prosecution against the applicant thus cannot be said to be strong enough to deny liberty to the applicant, who is behind the bars for more

than 7 months. The apprehension of the State can be taken care of by imposing certain conditions on the applicant. The learned senior counsel for the applicant has, therefore, made out a case for allowing the application.

In the result, the criminal application is allowed.

The applicant be released on bail on his furnishing P.R. Bond of Rs.25,000/- (Rupees Twenty Five thousand only) with one solvent surety in like amount, on the following conditions :

- i] The applicant will reside at Nagpur and to provide his address and cell number as well as one of the relatives at Nagpur to the Investigating Officer and not to enter Akola town till commencement of the trial.
- ii] The applicant to cooperate with the investigating agency and attend police station in which jurisdiction the applicant will reside on 2nd and 4th Sunday of every month between 9.00 am and 12.00 noon except on the dates of the trial and as and when called by the I. O.
- iii] The applicant should maintain a diary of his attendance duly countersigned by the police station officer of the concerned police station.
- iv] The applicant shall not tamper with the evidence nor commit any act such as

contacting the prosecution witnesses or pressurize them.

- v] In case the applicant is moving out of the area of police station concerned, he shall inform the police station about his visit to other place.

JUDGE

Diwale