

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Application (APPP) No.210/2015 in Criminal Application (ABA) No. 34/2015 with APPP No.1559/2014

Mohammad Zubair s/o Mahamad Sabir Vs. State of Mah.

Notes, Office Memoranda of
Coram, appearances, Court's orders Court's or Judge's
or directions and Registrar's orders. Orders.

CORAM : PRASANNA B.VARALE, J.
DATE : FEBRUARY 23, 2015.

Heard Shri Karode, the learned counsel for assisting the prosecution, Shri H.A. Biherani, learned counsel for the applicant and Shri M.I. Khan, the learned APP for the respondent.

This is an application for permission to assist the prosecution filed by the complainant Mohd. Yunus Sheikh Rehman.

For the reasons stated in the application, the application is allowed.

Criminal Application no.34/2015

Heard Shri H. A. Biherani, the learned counsel for the applicant.

The applicant is before this Court seeking protection in the nature of pre-arrest bail in connection with Crime no.117/2014.

The present applicant was protected by interim orders by this Court on 3rd February, 2015 on the backdrop of the submission of the learned counsel that the applicant is prosecuting his studies and the applicant is similarly circumstanced with one Mohammad Javed s/o Mohammad Yunus, whose application was allowed by this Court. Perusal of the report lodged at the instance of Mohd. Yunus Sheikh Rehman shows that on 1.11.2014 religious activity popularly known as "Haidush" was being carried out in the area. Mohd. Sabir reached on the spot started abusing and was asking to close down the activities of "Sawari" and "Haidush". The people in the locality though they were closing down that activity, Sabir was not happy with the closure of activity. He started assaulting son of the informant-complainant and Atiq went to wife of Yunus Sayara. She made an attempt to intervene but she was also subjected to assault. It is the submission of the learned counsel Mr. Biherani that initially the offence was registered under Section 324 of the I.P. Code and as there were counter cases against each other by the parties to give a serious colour to the incident. There was an addition of serious offence under Section 307 of the I.P. Code. Shri Biherani further submits that in the report, the role attributed to the present applicant is giving blows by a stick. His submission was that the alleged victims of the incident received minor injuries and even the alleged weapon is not such a dangerous weapon like sharp edged weapon but a stick. He also invited my attention to the order passed by this Court in Criminal Application (ABA) No. 642/2014 filed by Mohammad Javed Mohammad Yunus. In support of

his submission that the applicant is similarly circumstanced with Mohammad Javed and as such, the claim of parity was raised.

Per contra, Shri Khan, the learned APP vehemently opposes the application. The learned APP by inviting my attention to the reply filed by the State and also by making material collected by the Investigating Agency available for my perusal submitted that the applicant who was actively involved in assault on a lady as well as the son Mohd. Atiq. The learned APP further submits that as the first information report was only it to trigger point to state that the Investigating Agency in motion. He further submits that in the process of collection of evidence, statements of the witnesses and medical certificates were collected. The learned APP Shri Khan submits that the medical certificate clearly shows that the victim Atiq who was subject of an assault on the vital part of the body and the nature of the injuries show that the attack was with full force.

On the backdrop of the submissions of learned counsel, I have gone through the material collected by the Investigating Agency. I find considerable merit in the submission of learned APP that the report lodged at the instance of Mohd. Yunus was a trigger point and as he himself, his son and his wife were injured, the priority was to provide medical assistance to injured victims. What reveals from the other material is, the statements of the independent witnesses who are the residents of the area, who in chorus state about presence of

the applicant and other assailants. The witnesses state that the applicant picked up the stick/rafter and gave blows on Mohd. Atiq thaat is the son of the informant-complainant wife namely Sayara Parvin. The victim - Mohd. Atiq was shifted to a private hospital at Nagpur. It seems that on the very next day of the incident Mohd. Atiq was shifted to CIIMS Hospital, Nagpur. The certificate issued by the said Hospital Authority show that at the admission itself Mohd. Atiq was a patient of Post Traumatic severe injuries and was in need of emergent medical care and assistance. The certificate further shows that the condition of the victim was so critical that he was provided life saving support like on a ventilator. The photographs of the victim are also placed on record. The Senior Consultant in Neurosurgery Department of CIIMS Hospital certified that Shri Mohd. Atiq Mohd. Yunus was a case of right frontal contusion with right FTP acute SDH with left parietal contusion. It further refers that he underwent right FTP compressive craniectomy, evacuation of right frontal contusion and placement of bone in right thigh with elective ventilation. The patient was unfit to give statement due to tracheotomy tube. Thus, the certificate is more than sufficient to show that the injury caused by the victim and its seriousness. The other material namely medical certificate of Smt. Sayara Parvin shows that the nature of injury caused by Smt. Sayara Parvin is dislocation of middle finger. The documents also show that initially Mohd. Atiq was provided some treatment at District Hospital, Achalpur and that certificate also show the seriousness of the injury caused by Mohd. Atiq.

Considering this material, I am unable to accept the submission of the learned counsel for the applicant that the injury caused by the victim Atiq was a simple injury. The other submission of the learned counsel that the applicant stands on similar footing with Mohd. Javed also cannot be accepted. On perusal of the order passed by this Court in Criminal Application (ABA) 642/2014 in case of Mohd. Javed Vs. State, it reveals that this Court on the backdrop of the material found that the role attributed to the applicant-Mohd. Javed Mohd. Yunus was giving a fist blow and the vital blows were attributed to other accused namely Salim.

Thus, in my opinion, this is not a case where the applicant can be protected by the relief in the nature of pre-arrest bail. The application is thus merit-less it deserves to be rejected and it is accordingly rejected.

Needless to state that the interim protection granted to the applicant by this Court on 3rd February, 2015 stands vacated.

JUDGE

Ambulkar