

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

901 CRIMINAL APPLICATION NO. 4767 OF 2016

MOHSIN KHAN ASIF KHAN AND ORS.

VERSUS

THE STATE OF MAHARASHTRA

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Mr. Satej S.Jadhav, Advocate for Applicants.

Ms. P.V.Diggikar, A.P.P. for Resp. – State.

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CORAM : A.M.BADAR, J.

DATE : 8th SEPTEMBER, 2016

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PER COURT :

1. The applicants/accused in Crime No. 67/2016 registered at Yawal police station, Dist. Jalgaon for the offences punishable U/ss 307,143,147,148,149,324,323,504 of the Indian Penal Code and u/s 37 (1) (3) of the Maharashtra Police Act at the instance of Syed Liyakat @ Raju Syed, by this application are seeking pre-arrest bail.

2. Heard the learned counsel for the applicants. He argued that there was free fight between 2 groups and injuries sustained by the alleged victim of the crime in question are

simple in nature. Considering the weapons used and the injuries caused, Section 307 of the Indian Penal Code may not be attracted to the crime in question and, therefore, custodial interrogation of the present applicants is not warranted.

3. Learned A.P.P. opposed the application by submitting that there are eye witnesses to the incident in question and accused persons, after forming an unlawful assembly, attempted to kill the members of the prosecuting party.

4. Perused the papers of investigation. According to the informant, there was dispute between him and accused persons over the issue of fetching drinking water at Madarsa. The informant reported that because of that dispute, on 13/06/2016, the applicants along with co-accused came to his house armed with weapons such as bat, hockey stick and iron rods. By indulging in rioting, accused persons including the applicants, assaulted the informant, his son Syed Azhar, Syed Lukman, Syed Basit as well as Syed Daud.

5. It is seen that in respect of the same incident, Abusufiyan Yusuf Khan has lodged report with Yawal police station on 15/06/2016, which has resulted in registration of Crime No. 68/2016. Informant Abusufiyan Yusuf Khan alleged that on 13/06/2016 at about 9.00 p.m., Syed Liyakat [informant in this case] along with other accused persons formed an unlawful assembly and assaulted him as well as his relatives.

6. Be that as it may, perusal of both F.I.Rs. *prima facie* reveals that there was free fight between 2 groups over the issue of fetching drinking water at Madarsa. The weapons allegedly used by the accused persons are bat, hockey stick and iron rods. Injury certificates of Syed Daud, Syed Lukman and Azhar Syed shows that they suffered head injury and blunt trauma. Injury certificates collected by the Investigating Officer from Hayat hospital and General hospital, Jalgaon does not disclose that alleged victims of the crime in question suffered any grievous injury. True it is that for attracting penal provisions of Section 307 of the Indian Penal Code, even causing injury is not necessary and what is material is intention coupled with overt act, but in the case in hand, nature of injuries, as reflected from the injury certificates, *prima facie* does not show that accused persons including the applicants intended to commit murder of members of the prosecuting party. Nature and extent of injury is relevant. If Section 307 of the Indian Penal Code is not attracted, then the offence becomes punishable u/ss 324 read with 149 of the Indian Penal Code. In this view of the matter, custodial interrogation of the present applicants is not warranted. Hence, the following order.

(i) The application is allowed.

(ii) In the event of their arrest in Crime No. 67/2016 registered at Yawal police station, Dist. Jalgaon for the offences punishable U/ss 307,143,147,148,149,324,323, 504 of the Indian Penal Code and u/s 37 (1) (3) of the

Maharashtra Police Act, applicant No. 1 Mohsin Khan Asif Khan, applicant No. 2 Wasim Khan Asif Khan, applicant No. 3 Ashfaq Khan Aashique Khan and applicant No. 4 Zakir Khan Aashique Khan be released on bail on executing P.R. Bond of ₹ 25,000/- [Rupees Twenty Five Thousand] each and on furnishing surety in the like amount.

(iii) As a condition of this Order, the applicants shall not extend any threat, inducement or promise to the persons acquainted with the facts of the accusation so as to dissuade them from disclosing the same either to the police or the Court.

(iv) The applicants shall not tamper the evidence of the prosecution.

(v) The applicants shall attend the concerned police station on every second Sunday of each month between 11.00 a.m. and 1 p.m. till filing of the charge sheet and they should co-operate the Investigating Officer in the investigation of the crime in question.

[A.M.BADAR, J.]