

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

913 CRIMINAL APPLICATION NO. 5392 OF 2016

TAKI MOHMADUMAR SHAIKH

VERSUS

THE STATE OF MAHARASHTRA

.....

Mr. Saud N.Deshmukh, Advocate for Applicant.

Mr. S.M.Ganachari, A.P.P. for Resp. – State.

.....

CORAM : A.M.BADAR, J.

DATE : 14th OCTOBER, 2016

.....

PER COURT :

1. The applicant/accused in Crime No. I - 240/2016 registered at Sillod (Rural) police station, Tq. Sillod, Dist. Aurangabad for the offences punishable U/ss 307,302,324, 143,147,148,149,323,504,506 of the Indian Penal Code and u/ss 3 (I) (X) and 4 (I) (1) (S) of the Scheduled Casts and the Scheduled Tribes (Prevention of Atrocities) Act, by this application is seeking pre-arrest bail.

2. Heard the learned counsel for applicant/accused. By pointing out the certificate issued by the M.G.M. Hospital, Aurangabad, the learned counsel for applicant submitted that present applicant was admitted as indoor patient in the said hospital from 09/08/2016 till the date of issuance of certificate i.e. 25/08/2016. By drawing my attention to the F.I.R., he argued that the incident took place on 14/08/2016. The applicant was not present on the spot and his name is mentioned in the F.I.R. only because of civil dispute between the parties.

3. The learned A.P.P. opposed the application by contending that statement of injured witnesses, including the informant, shows that present applicant was one of the members of the unlawful assembly indulging in rioting and murdering the son of the informant by name Amol.

4. Considered the rival submissions and perused papers of investigation. The incident took place on 14/08/2016. According to the report lodged by Indubai, there is dispute between the prosecuting party and accused party over the open land adjoining the house of the informant

Indubai. On 14/08/2016, work of construction of a wall on that disputed land came to be started by accused persons. When informant Indubai and her daughter Vaishali took exception to this act of accused persons and Vaishali was taking photograph of that construction, accused Ahmad Omar Shaikh pelted a brick at Vaishali. Co-accused Faruq Omar Shaikh caught hold of Vaishali by her hair and caused her fall. The accused persons gave casteists abuses to members of the prosecution party. According to the prosecution case, when Amol Dandge – son of the informant came on the spot, accused persons pelted stone on his head and injured him. According to the prosecution case, said Amol died because of head injury on 17/08/2016.

5. Name of present applicant is mentioned as Takia Omar Shaikh in the F.I.R. by stating that he was one of the members of unlawful assembly. Witnesses related to the informant Indubai are also naming the present applicant as member of unlawful assembly, which indulged in rioting and murdering Amol. However, statement of Sachin Bhaskar Jogdande, an independent witness, does not show that the applicant was present on the spot of the incident at the time

of incident. According to the prosecution case, the incident took place when, at the instance of accused persons, a wall was being constructed on the disputed land. The said wall was being constructed by engaging 2 labourers by accused persons. Statements of those 2 labourers are recorded by the Investigating Officer. Those 2 labourers are specifically naming the accused persons who were present on the spot. They are not naming present applicant who was present on the spot. This lends assurance to the certificate issued by the department of Urology of M.G.M. Hospital, Aurangabad which states that present applicant was taking treatment as indoor patient right from 09/08/2016 till 25/08/2016 i.e. on the date on which the said certificate was issued. The applicant has placed on record the admission form showing the admission of present applicant at 14:53:56 on 09/08/2016.

6. It is seen that there was dispute between the parties over the open land adjacent to the house of the informant. Civil Suit in respect of the said disputed land is pending, in which the elder brother of present applicant is party. In these facts situation, possibility of false implication

of the applicant is *prima facie* apparent. Therefore, his liberty needs to be protected. Hence, the following order.

(i) The application is allowed.

(ii) In the event of his arrest in Crime No. I - 240/2016 registered at Sillod (Rural) police station, Tq. Sillod, Dist. Aurangabad for the offences punishable U/ss 307,302,324, (i)143,147,148,149,323,504,506 of the Indian Penal Code and u/ss 3 (I) (X) and 4 (I) (1) (S) of the Scheduled Casts and the Scheduled Tribes (Prevention of Atrocities) Act, applicant Taki Mohmadumar Shaikh be released on bail on executing P.R. Bond of ₹ 20,000/- [Rupees Twenty Thousand] and on furnishing surety in the like amount.

(iii) As a condition of this Order, the applicant 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 applicant shall not tamper the evidence of

the prosecution.

(v) The applicant shall attend the concerned police station on 21/10/2016 and 27/10/2016 between 11.00 a.m. and 1.00 p.m. and he should co-operate the Investigating Officer in the investigation of the crime in question.

[A.M.BADAR, J.]

KNP/Cr.Apln. 5392.2016