

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRI. BAIL APPLICATION NO. 202 OF 2016

Tanaji Arjun Phalake & Anr. ... Applicants.

V/s.

The Senior Inspector of Police & Anr. ... Respondent.

Mr. Subodh Desai, Advocate for the Applicants.

Mr. Arfan Sait, A.P.P. for the Respondent – State.

CORAM : A. M. BADAR, J.

DATE : 21st JULY, 2016

P.C. :

1 Applicants/accused in Crime No. 85 of 2015 for the offences punishable under sections 307,141,143,147,148, 149 of the Indian Penal Code and under section 3,4,25(1)(B) & 30 of the Arms Act, registered with Koregaon Police Station, Dist. Satara, by this application under section 439 of the Criminal Procedure Code, are praying for releasing them on bail.

2 Heard the learned counsel appearing for Applicants /accused. He pointed out that in the FIR lodged by informant-Amol Ashok Phalke name of applicant-Tanaji is not figured so also in the statement of injured Ashok Phalke. Learned counsel for the applicants further argued that statement of Bharat

Phalke also does not reflect name of applicant -Tajani Phalke as assailant. My attention is also drawn to the statement of Sarfaraj Sayed, to submit that names of the present applicants are not disclosed by this witness. It is argued that even in the CCTV footage, applicant no.2- Kalpesh Kadam is not figuring.

3 As against this, the learned APP opposed the application by submitting that the incident is witnessed by several witnesses and the role of the present applicants can be found in the statement of eye witness - Amar Tukaram Phalke.

4 Perused the chargesheet. The FIR came to be lodged by Amol Phalke, who is son of the injured Ashok Phalke. It is seen from the FIR that in the Gram Panchayat Election, panel led by main accused-Kishor Phalke came to be elected; whereas panel supported by the prosecuting party met with a defeat. The chargesheet shows that because of political rivalry, on one occasion main accused-Kishor Phalke had threatened to kill injured-Ashok Phalke. There was quarrel between the two at that time.

5 According to the prosecution case, on 28.06.2015 injured Ashok Phalke was at the shop of one Kaka Pawar at Satara Road at village Padali. At that time, the group of accused persons led by Kishor Phalke came there. Kishor Phalke was armed with a gun, whereas co-accused were armed

with swords. According to the prosecution case, Kishor Phalke fired bullet from the gun on injured-Ashok Phalke. Rest of the accused assaulted him by swords.

6 Statement of witnesses shows how the incident had happened. The details of the incident are given by each of them. The entire episode seems to have witnessed by-Amol Phalke. His statement shows that applicant-Tanaji was riding a motorcycle and main accused Kishor was of pillion rider of it. His statement shows that applicant-Kalpesh Kadam had assaulted injured- Ashok Phalke by means of swords and also threw chilly powder in the eyes of the injured-Ashok Phalke. Injured Ashok had disclosed that accused Kishor Phalke fired bullets at him. He also states that applicant no.2 Kalpesh Kadam was armed with swords and assaulted him by sword. Witnesses Sarfaraj Sayed states that even injured-Ashok was holding sword and had assaulted accused-Sampat Phalke. Panchanama of CCTV footage shows the presence of applicant-Tanaji Phalke on the spot of the crime. FIR as well as statement of Bharat Phalke reflect previous statement of injured -Ashok Phalke.

7 Injury certificate shows several contused lacerated wounds on the person of injured Ashok Phalke, which may be attributable to sword apart from crushing injuries over right shin exposing the bone of muscles. The incident in question is

fall out of political rivalry and it happened at the market place when the injured was sitting in the shop of one Kaka Pawar. It is seen that the accused persons had formed unlawful assembly with common object of committing murder of injured -Ashok Phalke. Offence is serious and therefore, no case of bail is made out.

8 In the result, the bail application is rejected.

(A. M. BADAR, J.)

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