

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

BAIL APPLICATION NO.222 OF 2016

Kailash Mahadev Kadam & Ors.

...Applicants

Versus

The State of Maharashtra

...Respondent

.....

Mr. Ashok P. Mundergi, Sr. Advocate i/b. Mr. Jayant J.
Bardeskar for the Applicants.

Ms Veera Shinde, APP for the Respondent -State.

Mr. Gajanan N. Kadale, API, Pimpri Police Station, Pune, present.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE : 4th FEBRUARY, 2016.

P. C. :

This is an application for bail filed by the aforesaid Applicants, who are arrested in Crime No.648 of 2015 registered at Pimpri Police station, Pune, for offences punishable under sections 143, 147, 149, 307, 324, 504 and 506 of the IPC and section 37(1) r/w. 135 of the Bombay Police Act and section 3 (25) of the Arms Act.

2. The case of the prosecution in brief is that on 10.12.2015, there was a meeting at Balbhavan, Kharalwadi, Pimpri-Chinchwad, which was attended by the corporators and some others. It is alleged that in the course of the said meeting there was a quarrel between the

Applicants and others. The allegations against the Applicants are that they alongwith other co-accused assaulted and abused Geeta Mancherkar and the complainant Datta Ingle. It is further alleged that one of the Applicants had also attempted to cause death of Hamid Shaikh by means of a revolver.

3. Mr. Ashok Mundergi, the learned senior counsel for the Applicants has submitted that there is absolutely no material on record to show that the Applicants had formed an unlawful assembly with an object of committing the offence as alleged. He has further submitted that the material on record does not indicate that the Applicants were involved in causing any injury to attract offence under section 307 of the IPC. He has further stated that the Applicants are falsely implicated and a cross complaint has also been filed against the complainant and others.

4. Ms Veera Shinde, the learned APP has submitted that the statement of Geeta Mancherkar prima facie reveals that the Applicants are involved in commission of offence under provisions of 3(1) (10) of the Scheduled Castes and Scheduled Tribes Act. She has further submitted that there is material on record to show that the Applicants

were the members of the unlawful assembly and that the Applicants were involved in assaulting the complainant by means of an iron rod and that the Applicant- Kailash was involved in attempting to cause death of one Hamid by means of a revolver.

5. I have perused the records and considered the submissions advanced by the learned senior counsel for the Applicants and the learned APP for the Respondent -State. The records prima facie indicate that on 10.12.2015 there was a meeting of corporators arranged at Balbhavan, Kharalwadi, Pimpri, Pune, and citizens of ward Nos.40 and 41 at 3.00 p.m, which had proceeded without any untoward incident for almost about half an hour. The complainant had asked a question about illegal construction in ward Nos.40 and 41 and alleged that he suspected that concerned corporators were in collusion with the builders and were allowing them to carry out illegal construction. The said question angered the Applicants and the same led to the alleged incident.

6. The FIR does not prima facie indicate that the Applicants and others had assembled at Balbhavan with an intention of assaulting or causing injury to the complainant and others. The material on

record does not prima facie indicate that the Applicants had caused any grievous injuries to the complainant or Geeta and/ or attempted to cause death of the complainant or any other person. Though the Applicant No.1 is alleged to have threatened Hamid Shaikh by revolver, no such revolver was recovered even though the Applicant No.1 was arrested on the same day. Hence, in my considered view, there is no prima facie material to attract the provisions of section 307 of the IPC.

7. The records prima facie reveal that the incident had occurred at the spur of the moment and that both groups were involved in a scuffle which led to filing of complaint and cross complaint against each other.

8. Though the learned APP has submitted that the Applicant No.1 Kailash has criminal antecedents, the records reveal that the Applicant No.1 has been acquitted in all the cases except Crime No.380 of 2014. Mr. Ashok Mundergi, the learned senior counsel for the Applicant has submitted that the police has already filed a report under section 169 of the Criminal Procedure Code in respect of the Crime No.380 of 2014. It is therefore, evident that the Applicant No.1 has no criminal antecedents.

9. The Applicants are already in custody since 10.12.2015. The presence of the Applicants is no longer required in custody for investigation or interrogation. The Applicants are permanent residents of Pimpri-Chinchwad, as such there is no possibility of the Applicants absconding.

10. In the light of the above facts and circumstances, the application is allowed on the following terms and conditions:

(i) The Applicants are ordered to be released on bail on furnishing bail bond of Rs.25,000/-(Rupees Twenty Five Thousand only) each with one surety each to the like amount to the satisfaction of the Judicial Magistrate, First Class, Pimpri.

(ii) The Applicants shall not interfere with the complainant or any other witnesses.

(iii) The Applicants shall not leave Pune-District till filing of the charge-sheet without prior permission of the Judicial Magistrate, First Class, Pimpri.

(ANUJA PRABHUDESSAI, J.)