

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 2204 OF 2016

Rakesh S/o Machindra Nagale, **....Applicant**

Versus

The State of Maharashtra & Anr., **...Respondents.**

WITH
CRIMINAL APPLICATION NO. 4730 OF 2016

The State of Maharashtra **....Applicant**

Versus

Nohid Nisar Bagwan **...Respondent.**

WITH
CRIMINAL APPLICATION NO. 4731 OF 2016

The State of Maharashtra **....Applicant**

Versus

Sarfaraj Bakelal @ Taherali Sayyad **...Respondent.**

WITH
CRIMINAL APPLICATION NO. 4732 OF 2016

The State of Maharashtra **....Applicant**

Versus

Sajid Khalid Malik **...Respondent.**

WITH
CRIMINAL APPLICATION NO. 4735 OF 2016

The State of Maharashtra **....Applicant**

Versus

Asif Muir Shaikh **...Respondent.**

WITH
CRIMINAL APPLICATION NO. 4741 OF 2016

The State of Maharashtra **....Applicant**

Versus

Sarfaraj @ Bhaiyya Jamal Shaikh **...Respondent.**

WITH
CRIMINAL APPLICATION NO. 4742 OF 2016

The State of Maharashtra **....Applicant**

Versus

Yunus Masjid Shaikh **...Respondent.**

WITH
CRIMINAL APPLICATION NO. 4743 OF 2016

The State of Maharashtra **....Applicant**

Versus

Nayuum Shakil Bagwan **...Respondent.**

WITH
CRIMINAL APPLICATION NO. 4745 OF 2016

The State of Maharashtra **....Applicant**

Versus

Tofiq Kadar Shaikh & Anr. **...Respondents.**

WITH
CRIMINAL APPLICATION NO. 4747 OF 2016

The State of Maharashtra **....Applicant**

Versus

Salman @ Javed Shabbir Bagwan **...Respondent.**

WITH
CRIMINAL APPLICATION NO. 4748 OF 2016

The State of Maharashtra

....Applicant

Versus

Soheb Rajmohammad Shaikh @ Bidya, **...Respondent.**

Mr. M.M. Nerlikar, APP for State in all applications.

Mr. R.A. Tambe, Advocate for applicant in CA No. 2204/16.

Mr. Shaikh Shabbir K., Advocate for respondents in CA Nos. 4730, 4735, 4742, 4743, 4747 of 2016.

Mr. Shaikh Mazhar A. Jahagirdar, Advocate for respondents in CA Nos. 4731, 4741, 4745 and 4748 of 2016.

CORAM : T.V. NALAWADE, J.

DATED : March 29, 2017.

ORDER :

1. All the applications are filed for cancellation of bail granted by the learned Additional Sessions Court, Shrirampur, District Ahmednagar in C.R. No. 27/2016 registered in Shrirampur City Police Station for the offences punishable under sections 302, 307, 326, 149 etc. of Indian Penal Code and section 7 of the Criminal Law Amendment Act, 1932 and section 4 r/w. 25 of the Arms Act. One application is filed by original complainant bearing No. 2204/2016 against accused - Sarfaraz Bakelal @ Taherali Sayyad as bail was granted to him by the Sessions Court prior to filing of the chargesheet. The State has

also filed application against aforesaid accused. Thus, there are two applications filed for cancellation of bail as against this accused. The applications are filed on merits by contending that in view of the material available, the Sessions Court ought not to have granted relief of bail. When this Court asked about the conditions, no submission was made that there was breach of conditions. Similarly, the submissions made do not show that respondents, who are granted bail, are history sheeters. The submissions made show that to main accused namely Akram Akil Shaikh, bail is not granted and he is still behind bars.

2. The incident in question took place on 28.1.2016. In the first incident, which took place at about 11.00 a.m., when the complainant and his cousin brother Anil Nagale were present at Bazar Ves, the main accused Akram picked up quarrel with him. The complainant had felt that Akram was giving abuses and Akram said that he was having talk with his friends and he was not addressing the complainant and on that count, the quarrel took place. The complainant has contended that Akram was feeling that the complainant and his friends were staring at them and their intention was to pressurize Akram and to show them that they would teach lesson to Akram.

3. The second incident took place after 8.00 p.m. at Sambhaji Chowk. The complainant and his four to five friends were present there. The complainant has made allegations that eight persons, whose names are given in the F.I.R. and who are friends of Akram and two more unknown persons, came there. Allegations are made that they were holding wooden log and iron rod and they assaulted the complainant and his friends by using these weapons. Allegations are made against Akram that he gave blows of iron rod on the head of complainant and also to Rameshwar. Rameshwar and complainant became unconscious and they were shifted to Government Hospital. The F.I.R. of complainant - Rakesh was recorded there.

4. There are statements of eye witnesses showing that the vital blow was given by Akram on the head of deceased. The injury certificate in respect of complainant shows that there was haematoma at frontal region, there were fracture injuries to right tibia, left fibula and there was one injury to left forearm. There was fracture of skull of the deceased and there was intracranar hemorrhage. This injury was caused due to blow given near left ear by Akram. Other injuries were there on the dead body, but they were minor in nature. The aforesaid material shows that when in the F.I.R., it was contended that 10 persons from

accused side had participated in the incident, chargesheet came to be filed against 12 persons. Names of both Sarfaraj were not there in the F.I.R. Name of Taufik was also not there. The record shows that the provisions of section 120-B of I.P.C. was added on the basis of statement given by one witness, who stated that he heard the conversation of the accused before the incident.

5. The respondents were arrested on 29th and 30th January, 2016 and they got bail on 20.5.2016. It can be said that there was some dispute between the two groups and due to that the incident in question took place. Weapons like iron rod and wooden log are shown to be used in the incident and the injuries which can be called as grievous and which were sustained by complainant and the deceased are already described.

6. The Sessions Court has granted bail as respondents were behind the bars for about four months and there is the material of aforesaid nature against the respondents. The main accused, who caused haematoma at frontal region to complainant and who caused death of one person, is behind the bars. The respondents are not history sheeters. Thus, it cannot be said on merits that the Sessions Court has committed error in granting the relief of bail.

7. The learned APP placed reliance on the case reported as **AIR 2011 SC 1945 [Prakash Kadam & etc. Vs. Ramprasad Vishwanath Gupta and Anr.]**. The learned counsels for respondents placed reliance on the cases reported as **AIR 1984 SC 372 [Bhagirathsinh s/o. Mahipat Singh Judeja Vs. State of Gujarat]**, **AIR 1993 SC 1 [Aslam Babalal Desai Vs. State of Maharashtra]**, **1994 (3) Crimes 1013 (SC) [Dolat Ram and Ors. Vs. State of Haryana]** and **AIR 1978 SC 961 [State (Delhi Administration) Vs. Sanjay Gandhi]**. The facts and circumstances of each and every case are always different. In view of the facts and circumstances of the present case, which are relevant and which are already quoted, this Court holds that the bail granted to the respondents cannot be cancelled. Considering the grounds mentioned for cancellation of bail, this Court holds that it is not possible to cancel the bail. In the result, all the applications stand rejected.

[T.V. NALAWADE, J.]

SSC/