

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3092 OF 2017

1. Sayyad Rizwan Sayyad Mahmood
@ Shaikh Rizwan Shaikh Mahmood
2. Sayyad Azhar Sayyad Mazhar ...Applicants
@ Shaikh Azhar Shaikh Mazhar

versus

The State of Maharashtra ...Respondent

WITH
CRIMINAL APPLICATION NO. 3093 OF 2017

1. Sayyad Rizwan Sayyad Mahmood
@ Shaikh Rizwan Shaikh Mahmood
2. Sayyad Azhar Sayyad Mazhar ...Applicants
@ Shaikh Azhar Shaikh Mazhar

versus

The State of Maharashtra ...Respondent

.....
Mr. N.R. Shaikh, advocate for the applicant
Mr. A.S. Shinde, A.P.P. for the respondent-State.
.....

CORAM : V. K. JADHAV, J.
DATED : 7th AUGUST, 2017

PER COURT:-

1. These two applications though filed separately, arise out of one and the same incident. The concerned police has registered two separate crimes and arrested the present applicants in connection

with those crime. Hence, these two applications are filed for getting released on bail. The applications, being criminal bail application No. 181 of 2017 and 182 of 2017, of the applicants with similar prayer came to be rejected by the Additional Sessions Judge, Bhusawal, by order dated 15.6.2017.

2. On the basis of complaint lodged by one Chintaman Narayan Aswar, crime No. 222 of 2012 came to be registered for the offences punishable under Sections 307, 324, 341, 345, 295(C), 336, 337, 504, 506, 143, 147, 148, 149 of I.P.C. and 37(1) (3) r.w. 135 of Maharashtra Police Act, with police station, Raver.

Similarly, on the basis of the complaint lodged by one Anil Chandrakant Kakde crime No. 224 of 2012 came to be registered for the offences punishable under Sections 302, 324, 435, 436, 337, 353, 332, 427, 143, 147, 148, 149 of I.P.C. and section 37 (1) (3) r.w. 135 of Maharashtra Police Act, with police station, Raver.

3. In both the cases, the facts are identical. On 24.12.2012, at about 17.00 hours, when a funeral procession of a woman of Hindu community was proceeding from the area of Muslim community, the persons from Muslim community had obstructed those people and the said procession on the ground that they should not beat the drum

in front of Masjid. In consequence of which, hot exchange of talks and quarrel occurred. Later on riot took place between the two communities. In this incident of riot, one person of Muslim community and one person of Hindu community died. Consequently, two separate crimes, as aforesaid, came to be registered with the same police station.

4. Learned counsel for the applicants submits that there is no evidence against the present applicants and no overt act as such is attributed to them. During the course of investigation, the police have recorded the statements of certain witnesses, wherein certain persons, as stated by those witnesses, shown to have been involved in the crime. However, there is mistaken identity so far as the present applicants are concerned. Though they are Sayyad, their names have been mentioned in the statements of those witnesses as Shaikh. On the other hand, in the complaint, names of present applicants are not mentioned. Learned counsel submits that though applicants remained in village Raver for entire period, however, due to such mistaken identity, they were arrested in the year 2017. The applicants accused were all the while stayed in village Raver and the police never tried to effect their arrest. Learned counsel submits that both the applicants have fixed place of residence. They born and brought up at Raver and having immovable property in their own

names and as such, they will be easily available for trial. Their antecedents are clear.

5. Learned A.P.P. has strongly resisted the applications on the ground that there was communal riot in the village and witnesses have mentioned the names of these two applicants in their respective statements. Thus, there is prima facie evidence about the involvement of applicants in the crime. Though the investigation was completed, way back in the year 2012 and charge sheet was also filed in the same year, both the applicants remained absconding till their arrest. Learned A.P.P. submits that there is sufficient evidence against the applicants and thus their applications for getting released on bail is thus liable to be rejected.

6. On perusal of contents of complaints, it appears that the names of present applicants are not mentioned in the complaints. Though learned counsel has vehemently submitted about mistaken identity, I do not think that such mistaken identity is possible. There may be mistake about mentioning of Shaikh instead of Sayyad. However, on perusal of investigation papers, it appears that no specific role is attributed to the present applicants and general allegations have been made against them. Otherwise also, in case of communal riot, it is very difficult to find out individual acts.

However, in the instant case, there are absolutely no overt act attributed to the applicants. Learned counsel for the applicants submits that the applicants are born and brought up at Raver. They own and possess the immovable properties at Raver. The applicants are small traders and all the while remained in Raver doing their trading business right from 2012 till their arrest. Thus, only because the applicants remained absconding for certain period, however, in absence of any incriminating evidence against them, their applications for getting released on bail cannot be rejected.

7. At this stage, learned counsel for the applicants submits that both the applicants though Sayyad by surname are detained in the jail by surname Shaikh. Thus, the applicants without any prejudice to their defence, seek leave to amend the applications so far as their surname is concerned. Learned counsel submits that otherwise the applicants would not be released by the jail authorities. In view of the above submissions, without prejudice to the defence of the applicants, amendment as sought is allowed. Amendment be carried out forthwith.

8. Thus, by imposing certain conditions, these two applications can be allowed. Hence, I proceed to pass the following order:-

O R D E R

- I. Criminal applications are hereby allowed.
- II. The applicants, (1) Sayyad Rizwan Sayyad Mahmood @ Shaikh Rizwan Shaikh Mahmood and (2) Sayyad Azhar Sayyad Mazhar @ Shaikh Azhar Shaikh Mazhar be released on bail on their furnishing personal bond of Rs.25,000/- each with one surety in the like amount, by each of them, on the following conditions:-
 - a) The applicants shall not tamper with the prosecution evidence, in any manner.
 - b) The applicants shall attend the concerned police station once in a week on every Sunday between 9.00 a.m. to 11.00 a.m. for three months from today.
- III. Criminal applications are accordingly disposed of.

(V. K. JADHAV, J.)

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