

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

CRIMINAL BAIL APPLICATION NO. 785 OF 2017

Sameer Abrar Sayyed & Anr.

...Applicants

Versus

The State of Maharashtra

...Respondent

Ms. Anjali Patil a/w Mr. Arun Rajput for the applicant.
Smt. J. S. Lohokare, APP for the respondent – State.
API S. A. Bhat, SB-I, C.I.D., Mumbai.

CORAM : PRAKASH D. NAIK, J.

DATE : 19 JULY, 2017

P.C. :

1. This is an application for bail in connection with C. R. No.315 of 2016 registered with Shivaji Nagar Police Station, Mumbai. The offences were registered under sections 307, 395, 397, 427 read with 34 of IPC. Applicant No.1 was arrested on 7th August, 2016 and applicant no.2 was arrested on 13th August, 2016. On completing investigation, chargesheet has been filed.

2. The prosecution case is that the complainant Sadik Nabihal Sayyed is resident of Govandi, Mumbai. He was working as Kadia in the hutment which was constructed on open ground of BMC. On the

said ground, Mukhtar Shaikh and Farid were carrying out the work of construction hence there was quarrel between them. The complainant was constructing hut at Road No.15, Govandi for the persons by name Iqbal. Farid and Irfan Diwate used to take haffta from those persons who were constructing hut on open ground of BMC. There was group of persons who are indulging in such activities. On 7th August, 2016, the complainant went to Road No.15 for construction work of hut. The accused viz. Sameer, Saddam and Akbar were standing at the said place. Sameer, Saddam and Akbar came near the complainant, he was assaulted by them. Sameer, Applicant no.1 has allegedly assaulted the complainant by sword on the left side of his head and Akbar, applicant no.2 allegedly assaulted the complainant with bamboo on right thigh. At that time Farid also came on spot and also tried to assault the complainant. But the complainant could avoid the attack. At that time, mother and sister of the complainant came at spot to rescue the complainant. Farkan @ Mulla, brother of Irfan Diwate came with hockey stick pushed the sister of complainant and gave blow of stick on the right side of her eye out of which she sustained injury. She also sustained injury on her nose. Irfan Diwate came with stick and assaulted sister-in-law of Rihana. During the said fight, mangalsutra of one of the witness was

taken away forcefully by the accused. In view of that FIR was registered with Shivaji Nagar Police Station.

3. The investigation is complete and chargesheet has been filed. The applicant preferred an application for bail before the Sessions Court which has been rejected.

4. Learned Counsel for the applicant submits that the applicant are falsely implicated in this case. It is submitted that in fact the applicants were assaulted by the complainant and others and in that regard the FIR has been lodged at the instance of applicant no.1 with the same police station. The said FIR was lodged vide C.R. No.316 of 2016 on the same day i.e. 7th August, 2016. The offences were registered under sections 397, 395, 506(2), 427, 34 of IPC. In the said FIR, Aftaq Irfan the complainant sadiq and others were implicated as accused. In the said FIR, Mukhtar Ahmad Vasiulla Shaik, Sadik / complainant and others were implicated as accused. It is submitted that on 7th August, 2016, the complainant and others assaulted the applicants. The complainant in the present case was having a sword in his hand by which he gave a blow on the head of applicant no.1 as a result of which he sustained injuries. In the cross FIR, it is also stated that Mukhtar Shaikh, the complainant and others

assaulted applicants. Mukhtar Shaikh has given a blow on the person of applicant no.1. It is submitted that applicant no.1 had sustained three injuries on his person. It is further submitted that there are no antecedents against the applicants.

5. Learned APP submitted that the applicants are named in the FIR and overt act has been attributed to them by the complainant. Applicant no.1 was armed with weapon by which he assaulted the complainant. It is further submitted that the complainant had sustained injuries on account of the said assault which is reflected in injury certificate.

6. Perused chargesheet which has been annexed to this application. It is apparent that applicant no.1 was assaulted and has sustained injuries in respect of which the FIR bearing C.R. No.316 of 2016 was lodged on the same day. In the said FIR, the complainant in the present case has been given a role of assaulting applicant no.1 by sword. It is also noted that applicant no.1 had sustained three injuries which is evident from the medical certificate. The injuries are in the nature of CLW abrasion and contusion. The injuries were caused by sharp / blunt object and one of injury was grievous. I have also perused the injury certificate of Sadik who is the

complainant in the present case. From the said certificate, it is evident that the complainant has sustained CLW contusion with sharp weapon and also abrasion / contusion with a blunt object. Both the injuries were however, simple in nature. The applicants are in custody since August, 2016. There are no criminal antecedents against both the applicants.

7. In the aforesaid circumstances, case for bail is made out with certain conditions. Therefore, I pass following order;

:: ORDER ::

- (i) Bail Application No.785 of 2017 is allowed.
- (ii) The applicants are directed to be released on bail in connection with C. R. No.315 of 2016 registered with Shivaji Nagar Police Station, Mumbai on executing P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand only.) each with one or more sureties in the like amount.
- (iii) The applicants are directed to stay away from Indira Nagar hutment area.

- (iv) The applicants are directed to report to Shivaji Nagar Police Station, Mumbai once in a month on the first Saturday of every month between 11.00 am to 1.00 pm till completion of trial.
- (v) The applicants should not tamper with evidence.
- (vi) The application stands disposed of.

[PRAKASH D. NAIK, J.]