

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

CRIMINAL BAIL APPLICATION NO. 1167 OF 2016

1	Shaqib Saeed Raes.	
2	Tanveer Saeed Raes.	... Applicants.
	Versus	
	The State of Maharashtra.	... Respondent.

WITH
CRIMINAL APPLICATION NO. 554 OF 2016
IN
CRIMINAL BAIL APPLICATION NO. 1167 OF 2016

	Salman Hassan Kaskar.	... Intervenor.
	<u>In the matter between</u>	
1	Shaqib Saeed Raes.	
2	Tanveer Saeed Raes.	... Applicants.
	Versus	
	The State of Maharashtra.	... Respondent.

Mr. Momin Mohd. Faroque Nisar, advocate for Applicants.

Mr. A. Kareem Khan Pathan, advocate for intervenor.

Ms. P.P. Shinde, APP for State.

**CORAM : SMT. SADHANA S. JADHAV, J
DATE : JANUARY 10, 2017**

P.C.:

1 Heard the learned Counsel for the applicants and the learned APP for State. Perused the papers.

2 This is an application under section 439 of the Code of Criminal Procedure, 1973. The applicants herein are arrested on 31/12/2015 in Crime No. 202 of 2015 registered at Padagha Police Station. The investigation is completed and charge-sheet is filed against the accused for offence punishable under section 302, 307, 326, 324, 336, 504, 506 read with section 34 of the Indian Penal Code.

3 It is the case of the prosecution that on 31/12/2012 Salman Kaskar lodged a report alleging therein that there was a quarrel between Nabid Saeed Rase, Sumaiya and her husband Yasin Nabid Nashikkar since wearing apparel of Sumaiya was stuck in the tin sheets which were placed near the house of the applicants. Jishan Kaskar removed the said sheets from the said place and there was

quarrel between them over the removal of said sheets. At about 8.30 p.m. younger brother of Nabid Saeed Raise i.e. the present applicant Shaqib Saeed Raise had raised the quarrel with the Jishan and his parents and was abusing them and there was altercation between both the parties. Nabid Sayeed had assaulted Yasin Nashikkar with knife and he had also assaulted Maqsood Kaskar with the said knife. In fact, the first assault was on Maqsood Kaskar and when Yasin had intervened to pacify them, at that time, Yasin was assaulted by Nabid. All the members who had come to rescue Yasin and Maqsood were also assaulted. The applicants were also present and it is specific allegation that the applicants had assaulted first informant with the help of tin sheet and that they had also assaulted Mazin and Jishan. Yasin Nashikkar had succumbed to the injuries.

4 Perused papers of investigation. It is the case of the prosecution that the applicants herein had assaulted the first informant and Jishan. The compilation of charge-sheet does not include the injury

certificate of the first informant. As far as Jishan is concerned, he had sustained contused lacerated wound on scalp, which was a bone deep injury. The suturing was done under local anesthesia.

5 The learned Counsel for the applicants submits that it is true that the applicants were present, when the incident had occurred and when Nabid had assaulted Maqsood and Yasin with knife. There was a quarrel and in the said altercation, the applicants had assaulted Jishan and first informant. According to the learned Counsel for the applicant, it cannot be said that the applicants had shared common intention with Nabid and other accused, who had caused the fatal injury upon Yasin. It is further submitted that in the heat of passion, the applicants had lifted the pieces of tin sheet and had assaulted the first informant and Jishan and had abused the other members of the family of the first informant.

6 It is true that the applicants are not the authors of the fatal injuries sustained by Yasin and it is in these circumstances, the applicants deserve to be enlarged on bail.

7 However, it is made clear that the observations made herein above are restricted to the application under section 439 of the Code of Criminal Procedure, 1973 and shall not be considered at the time of deciding the application for discharge or quashing of FIR or at the time of trial.

8 Hence, the following order is passed :

ORDER

- (i) The application is allowed.
- (ii) The applicants be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 50,000/- each and one or more solvent local sureties in the like amount.

(iii) The applicants shall not reside within local jurisdiction of Padgha till conclusion of the trial.

9 The application is disposed of accordingly.

10 Intervention application is heard, allowed and disposed of accordingly.

(SMT. SADHANA S. JADHAV, J)