

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

**CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1201 of 2015
IN
CRIMINAL APPEAL NO.190 OF 2015
CRIMINAL REVISION APPLICATION NO.**

Arshad Kutubuddin Makarani & Ors.)...Applicants

**V/s.
State OF Maharashtra)...Respondent**

Mr. M.S.Mohite with Ajinkya Jaibhave i/by Sudam Kale,
Advocates for the Applicants.

Mr. P.H.Gaikwad-Patil, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 11th JANUARY 2017.

P.C. :

This is an application by convicted accused nos.1, 3 and 4 for suspension of sentence and releasing them on bail during the pendency of the instant appeal. All three applicants along with 4 co-accused were tried by the learned Additional Session Judge, Nashik for offences punishable under Section 395 of IPC 307, 326 read with 149 of IPC, for offence punishable under Sections 143 , 147 and 148 of IPC and under Section 427 of

IPC apart from offences punishable under the Arms Act and the Maharashtra Police Act. Ultimately, by the impugned judgment and order dated 7.1.2015 passed in Sessions Case No.189 of 2010, the learned Additional Sessions Judge Nashik was pleased to convict appellants-accused along with two co-accused that is accused nos.2 and 5 of the offences punishable under Sections 143, 147, 148, 307 read with Section 149 of the IPC. They were sentenced to suffer rigorous imprisonment for 7 years and to pay fine of Rs.3,000/- each in default to undergo further rigorous imprisonment for 6 months for the offence punishable under Section 307 read with Section 149 of IPC. For other offences proved against them they were suitably sentenced and it is not necessary to mention those sentences as all sentences awarded were directed to run concurrently.

2 Heard Shri Mohite the learned counsel for the applicants-accused. He pointed out that the incident in question has resulted in registration of cross FIR by Shabana Anjum, who is sister-in-law of the applicant accused no.1 and applicant accused no.3. This has resulted in registration of the offence punishable

under Section 307 of IPC against PW 3 Sagir Sayyad, PW.4-Shakib Khan. The learned counsel for the applicants-accused further argued that no identification parade was held in order to enable PW.2 Moin Pathan and PW.5- Shaikh Phiroz Nazir to identify the accused persons, who were unknown to them. FIR was also not proved through PW.2 Moin. Weapons were not sent for chemical analysis. Learned counsel further argued that order of this Court dated 8.12.2015 passed in Criminal Application No.1518 of 2015 will not come in a way of this application as request of applicant no.2 Ejaj Makrani for releasing him on bail for one week to attend the marriage of his daughter was rejected with observation that such a relief can be asked by claiming parole and that he is not seeking relief of his release on bail during the pendency of the appeal. Mr. Mohite the learned counsel for the applicants-accused further drew out my attention to the order dated 30.4.2015 passed by this Court in Criminal Application No.184 of 2015 to point out that co-accused are already released on bail.

3 The learned APP opposed the application by submitting that there are eye witnesses to the incident in question

and evidence of P.W.2 Moin Pathan and P.W.5 Shaikh Phiroz Nazir is reliable. The learned APP further argued that evidence of star witnesses namely, P.W.3- Sayyad Sagiruddin Muniroddin and P.W.4- Shakib Sher Khan is sufficient to prove offences. He argued that earlier application of one of the applicants was rejected.

4 I have carefully considered the rival submissions and also perused the evidence adduced by the prosecution as well as the impugned judgment and order. According to the prosecution case, all accused persons were found to have formed an unlawful assembly and in prosecution of common object of that unlawful assembly, they assaulted P.W.3 Sayyad Sagiruddin Muniroddin and P.W.4 Shakib Sher Khan by chopper and sword. It is also claimed that accused persons snatched gold chain from neck of P.W.3 Sayyad Sagiruddin Muniroddin.

5 It is not in dispute that during the pendency of the trial, applicants were on bail and they had not misused their liberty. Undisputedly appellants/original accused nos.2 and 5 namely, Imtiyaz Makrani and Iftekar Makrani are released on bail

vide order dated 30.4.2015 in Criminal Application No.184 of 2015. It needs to be noted that the prosecution had levelled charge for the offence punishable under Sections 149 against all accused persons imputing vicarious liability on them. In this factual background, one will have to keep in mind that co-accused who were allegedly members of unlawful assembly are released on bail by this Court. Therefore, present applicants are also entitled for the same relief on the ground of parity though actual acts done by them during the course of alleged offence may be different.

6 It is seen from cross-examination of P.W.8 Subhash Chavan, Investigating Officer as well as from the paragraph 25 of the impugned judgment that the incident in question has resulted in registration of the cross FIR against the prosecuting party. This fact will have to be considered while examining whether the alleged offence can be said to have been proved.

7 P.W.2 Moin Pathan and P.W.5 Shaikh Phiroz Nazir have identified accused persons while they were in dock but no test identification parade was conducted by the prosecution during the

pendency of the investigation. Weapons of assault were not sent for chemical analysis.

8 It is apparent from the order dated 8.12.2015 passed in Criminal Application No.1518 of 2015 that bail for limited period was claimed by Applicant-Ejaj on the ground of marriage of his daughter and this relief was denied to him with observation that he can claim parole.

9 In the light of foregoing discussion, as co-accused who were stated to be members of unlawful assembly indulged in crime in question are already released on bail, I proceed to pass the following order:

(1) Application is allowed.

(2) Applicants-accused are directed to be released on bail on executing PR Bond in the sum of Rs.30,000/- and on furnishing surety in the like amount of each of them. Substantive sentence of imprisonment imposed on them stand suspended.

- (3) Applicants-accused to report to the trial Court on the first Monday of every calendar month till disposal of the appeal. If the trial Court is closed on a given Monday, they shall report to the trial Court on the next working day.

10 Application stands disposed of.

(A. M. BADAR, J.)