

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

BAIL APPLICATION NO.2377 OF 2017

Wasim @ Mukri A. Rahim Salar Applicant

Vs.

The State of Maharashtra Respondent

Mr. Sachinkumar P. Rajepandhare for the Applicant.

Mr. S.H. Yadav, APP for the State-respondent.

Mr. S.B. Rathod, PSI, Sadar Bazar Police Station, Solapur City.

Coram : Smt. Sadhana S. Jadhav, J.

Date : 19th December, 2017

P.C.:

1 Heard the learned counsel for the applicant and learned APP. Perused the papers of investigation.

2 This is an application under Section 439 of Code of Criminal Procedure. The applicant herein is arrested on 13th April, 2017 in Crime No.543 of 2016, registered with Sadar Bazar Police Station, Solapur, for the offences punishable under Sections 307, 324, 323, 504, 506, 427, 120(B), 143, 147, 148, 149 of Indian Penal Code, under Section 4/25 of Indian Arms Act and u/s 3,7 of Prevention of Damage to Public Property Act. The investigation is completed and

the charge-sheet is filed on 1st February, 2017.

3 It is the case of the prosecution that on 5th November 2016, there was quarrel between two rival groups. On 5th November 2016, Gazu Sadik Jahangirdar lodged a report at the Police Station alleging therein that on 4th November 2016, they had learnt that their relatives were assaulted by Salar group i.e. the group to which the present applicant belongs and that the injured are admitted in the civil hospital. Hence, the complainant alongwith his father, uncle and other relatives had been to civil hospital at about 9.30 pm. When they were in open ground, the members of other group i.e. Vajid Salar and others including 5 persons from the applicant's group who were injured in the earlier incident had also been to the civil hospital in Nai Jindagi area. It is alleged that the members of Salar group were armed with deadly weapons and had assaulted upon the members of the group of the complainant. On the basis of the said report, Crime No. 543 of 2016 was registered. In the course of the investigation, it was revealed that the members of the applicant's group were also severely injured. That the accused no.1 in Crime No. 543 of 2016 was brutally assaulted. However, he could not get aid in Solapur and therefore he was taken to the hospital at Vijapur, where he had to undergo an operation. It was revealed in the course of the investigation and yet no offence was registered against the complainant's group. Thereafter the wife of the original accused

no.1 filed a complaint before the Judicial Magistrate, First Class at Solapur, where the directions under Section 156(3) of Cr.PC. was issued. Pursuant to the said directions, Crime No. 468 of 2017 is registered at Sadar Bazar Police Station. Investigation is completed and charge-sheet is filed on 18th October, 2017 for the offence punishable under Section 307 Indian Penal Code.

4 Upon perusal of papers of investigation, it appears that the complainant had sustained two contused lacerated wounds on left forearm and at the back of left ear. He had sustained a deep contused lacerated wound on the left gluteal region and two blunt traumas. He had taken discharge on the same day against medical advise at 11.30 pm. Another injured Barkat had sustained three blunt traumas on the left thigh, left and right hand, which were described as simple injuries. Prima facie, at this stage, it cannot be said that the offence under Section 307 Indian Penal Code was made out. It appears to be a mob fury.

5 Learned counsel for the applicant submits that in fact accused no.1 in Crime No. 543 of 2016 had received incised wounds, sharp cutting on the left gluteal region and other accused persons in Crime no. 543 of 2016 had received incised wounds on the various parts of the body. In the facts of the present case, this Court is of the

opinion that further incarceration of the present applicant would be unwarranted.

6 However, it is made clear that the observations made hereinabove are restricted to the application under Section 439 Code of Criminal Procedure and shall not be taken into consideration for the purpose of quashing of F.I.R., discharge application or at the time of trial. Learned counsel for the applicant submits that in the facts of the present case, the applicant would reside at Akkalkot for the next six months i.e. upto 30th June, 2018 and after being enlarged on bail, the applicant shall furnish his address and cell-phone and other details to Sadar Bazar Police Station. Hence, the order :

ORDER

1 The application is allowed.

2 The applicant- Wasim alias Mukri A. Rahim Salar be enlarged on bail in C.R. No. 543 of 2016, registered with Sadar Bazar Police Station on furnishing P.R. bonds in the sum of Rs.25,000/- with one or more solvent sureties in the like amount.

3 The applicant shall not make an attempt to tamper with the evidence.

(Smt. Sadhana S. Jadhav, J)