

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

CRIMINAL BAIL APPLICATION NO. 1411 OF 2018

Mohammad Mudassar Faiyyaz Ahmed Pathan. ..Applicant.

V/s.

The State of Maharashtra. ..Respondent.

WITH
CRIMINAL BAIL APPLICATION NO. 1088 OF 2018

Javed Hamid Inamdar. ..Applicant.

V/s.

The State of Maharashtra. ..Respondent.

Mr. Munir Ahmed I/b. Ms. Sushma T. Mishra, advocate for applicant in BA 1411 OF 2018.

Mr. A.H.H. Ponda a/w. Mr. Abid Mulani I/b. Mr. Prasanna P. Patil, advocate for applicant in BA 1088/2018.

Mr. Sanjiv Kadam a/w. Mr. Prashant Rawool I/b. Mr. H.S. Kaazi, advocate for intervenor.

Mr. Prashant Jadhav, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : AUGUST 3, 2018.

P. C. :

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

2 This is an application under section 439 of the Code of Criminal Procedure, 1973. The applicants herein are arrested on

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5/10/2017 in Crime No. 396 of 2017 registered at Kondhwa Police Station for offence punishable under section 302, 324, 323, 504 read with section 34 of the Indian Penal Code and section 37(1) and 135 of the Mumbai Police Act.

3 It is the case of the prosecution that on 5/10/2017 Altaf Razzaque Shaikh lodged a report at the police station alleging therein that he had a dispute with Rafiq Babu Shaikh and a fortnight before the incident, he had lodged a report at the Kondhwa Police station against him. That on 5/10/2017 his younger son Aisar Shaikh had gone to Hamja Hair Cutting Saloon. That Ajhar Kureshi, Rizwan Khan, Mudassar Pathan and Javed Inamdar had questioned him about whereabouts of his father. They had abused him and thereafter, assaulted him with fists. Hence, Aisar Shaikh had called upon his brother Akib Shaikh on the spot and informed him about the incident. The first informant was also seated in the office of M.R. Construction i.e. of Rafiq shaikh. They had heard hue and cry from the nearby area and therefore, they rushed to the spot. He witnessed Akib and Aisar were being abused and assaulted by Ajhar, Rizwan, Mudassar and Javed Inamdar. The first informant had intervened to pacify. However, the accused were out of control and continued to assault his son. In the meanwhile, Ajhar had stabbed Aisar with a knife with which he was armed. When the first informant and his

son Akib were trying to separate them, at that time, Ajhar had once again stabbed him with the knife. Akib had fallen on the ground. That the applicants had facilitated the commission of act of Ajhar. Immediately, accused persons fled from the spot. The first informant, Rafiq and his son Aisar had taken Akib to Satyanand Hospital, Kondhawa and then to Ruby hospital, Wanwadi. Akib was declared dead on admission. On the basis of the said report, Crime No. 396 of 2017.

5 In the course of investigation, the Investigating Officer has recorded statement of one Dr. Shashikant Shukla on 6/10/2017 who is working with Mother Teresa Charitable Dental Hospital and Research Center in Shop No. 2 at Aditansh Society, Kondhwa. He has disclosed to the police that on 5/10/2017 at about 11.45 a.m. he had heard hue and cry outside his hospital and therefore, he had rushed out, but did not intervened between the two groups. Thereafter, he had again heard loud noise and therefore, he came out of the hospital and he saw that one person was lying in a pool of blood. He had brought the cotton gauze and thereafter, he had tried to stop bleeding and at that time, some people of the area had taken the injured to the hospital.

6 Learned APP submits that this is a case of direct evidence, wherein the first informant and his younger son Aisar are eye witnesses

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and therefore, the applicants do not deserve to be enlarged on bail.

7 As against this, the learned Counsel for the applicants has vehemently submitted that in the eventuality, the first informant and his younger son were present on the spot, the doctor would not have seen Akib lying in an injured abandoned condition. According to the learned Counsel, this would falsify the story of the eye witness.

8 The learned Counsel for the applicants has further brought to the notice of this Court that the patient was taken to Ruby Hospital, not by the eye witnesses, but by a third person. Moreover, after post mortem, the body was given in the custody of the paternal uncle of Akib i.e. Abdul Wahib Abdul Razzak, resident of Nana Peth.

9 The investigating papers would also show that there was a dispute between the complainant's family, Rafiq shaikh and the residents of Aditansh Society. It is further pertinent to note that the principal allegation of stabbing Akib is attributed to Ajhar Kureshi.

10 The investigating agency has recorded the statement of Nasrin, wife of Ajhar Shaikh, which indicated that Ajhar is in the habit of carrying a knife with him. He was the treasurer of Aditansh Cooperative

Housing Society. That there was quarrel between the society and Rafiq Shaikh. She has disclosed that on 5/10/2017 at about 11.30 a.m. she had heard some people quarreling in the society. Her husband had also joined the said group. She had followed her husband. Her husband was in the company of his two friends i.e. Javed Inamdar, applicant in Cr. Bail Application No. 1088/18 and Mudassar Pathan, applicant in Cr. Bail Application No. 1411 of 2018. They were quarreling. She then rushed to her house and after some time noticed that her husband had fled from the spot and there were blood stains on the ground.

11 The learned Counsel for the applicants has submitted that there was a complaint to the Commissioner of police, Pune by the members of the society that Rafiq Babu Shaikh and his associates are creating terrorizing situation in their society and have become a cause for law and order in the society. That the wife of Javed Inamdar i.e. Zarina had filed an application under Right to Information Act, 2005 and had sought information about the station diary. It is the case of Zarina that there was a phone call made to the police on 100 number. Upon inspection of the station diary, it has been disclosed that on 5th October, 2017 police had received the phone call from cell phone No. 8087804804 at about 11.44 a.m. and caller had informed the police that there was a quarrel going on in the society. The police was summoned. Similarly, at

11.51 on 5/10/2017 the police was called and was informed that a quarrel has taken place and there is blood all over and that there were about more than 50 people, who were quarreling.

12 According to the learned Counsel, the phone calls were made by the family members of the accused persons calling for police help. It is submitted that in the eventuality the applicants were participating in the said quarrel, the family members would not have called the police and created trouble.

13 The role of stabbing is specifically attributed to Ajhar and therefore, it cannot be said that the incident of stabbing had taken place in a melee. The role attributed to the present applicants is that they had facilitated the commission of crime but they were not armed with any deadly weapons. Be that as it may, upon considering the role attributed to the applicants, coupled with the fact that Dr. Shashikant Shukla had found the dead body of Akib in an abandoned state and the statement of Nasrin, the applicants deserve to be enlarged on bail. The co-accused Ajhar shall not claim parity with the present applicants.

14 The observations are *prima facie* and restricted to the application under section 439 of the Code of Criminal Procedure, 1973

and the same shall not be considered for discharge application or at the time of trial.

15 Hence, the following order is passed :

ORDER

- (i) The applications are allowed.
 - (ii) The applicants be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 50,000/- each with one or more solvent sureties in the like amount.
 - (iii) The applicants shall not leave Pune without prior permission of the court.
 - (iv) The applicants shall not enter into the jurisdiction of Kondhwa Police Station till 31st December, 2018.
 - (v) The applicants shall not tamper with the evidence.
- 16 The applications are disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]