

909- BA 1570 of 2018  
**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**BAIL APPLICATION No. 1570 OF 2018**

**Amir Mahamood Khan**

**...Applicant**

**Vs.**

**The State of Maharashtra**

**...Respondent**

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Mr. Jaydeep D. Mane for Applicant

Mr. S.H. Yadav -APP

Mr. K.G. Ghadge, API, Akkalkot (North) Police Station

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**CORAM : SMT. SADHANA S. JADHAV, J.**

**DATE: AUGUST 7, 2018**

**P.C.**

1. Heard. This is an application under section 438 of the Criminal Procedure Code.

2. The Applicant herein is arrested in Crime No. 469 of 2017 registered at Akkalkot (North) Police Station for offences punishable under section 307, 143, 144, 147, 148, 149, 504, 506 of the Indian

Penal Code.

3. It is the prosecution case that on 20<sup>th</sup> of October, 2017, Nooruddin Shaikh lodged a report at the police station alleging therein that on that day, his motorcycle had failed on the road in Sanjay Nagar Slum area. That he was attempting to start the motorcycle by giving a kick and at that juncture Mehiboob Palande had started abusing him as there was some quarrel between them in the past. He was joined by the Applicant and they had assaulted him with kick and fist blows. The Applicant had fled from the spot and after some time, Mehiboob Palande had again assaulted him with an iron and wooden stick and others had followed the same. His parents and his brother had tried to intervene and they were also assaulted by all the accused persons. On the basis of the said report, Crime No. 469 of 2017 was registered.

4. In the course of investigation, it has transpired that besides the complainant, four other persons had sustained injuries. Perused the injury certificate. Nooruddin Shaikh has sustained injury on his head on

the occipital region. The city scan of the head indicated that it is normal. He had also sustained injury on his left parietal region. However, the injuries are described as simple injuries. The others had sustained injuries on non-vital part. Therefore, prima facie offence punishable under section 307 of the IPC is not attracted .

5. The learned counsel for the Applicant had placed on record the medico legal certificate of the Nooruddin Shaikh, which shows only two injuries. However, the papers of investigation indicate that he had sustained as many as five injuries. It is pertinent to note that the advocate for the Applicant had obtained a true copy of the said certificate from the District and Sessions Court at Solapur. The investigation is in progress. Charge-sheet is not filed. It is more often seen that an accused is accessible to all papers of investigation even before filing of charge-sheet.

6. Upon an inquiry made by the Court, the learned APP, upon instructions, submits that since it is a certified copy, it appears that the

Investigating Officer/Prosecutor had given the copies for the perusal of the Court and they were retained by the Court and the true copy is given by the Advocate. This practice is deprecated by the High Court on several occasions. The Learned Sessions Judge, Solapur shall discontinue with this practice henceforth.

7. In the facts of the case, the Applicant deserves pre-arrest bail.

8. The observations are restricted to application under section 438 of the Criminal Procedure Code and shall not be taken into consideration for the purpose of quashing of FIR, discharge application or at the time of trial. Hence, the following order:

#### ORDER

(i) Application is allowed.

(ii) The Applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.25,000/- and one or more sureties in the like amount.

(iii) The Applicant shall report to the concerned police station everyday

from 24<sup>th</sup> August, 2018 to 27<sup>th</sup> August, 2018 between 10.30 a.m. to 1.00 p.m. and cooperate with the investigating agency.

The application stands disposed of in the aforesaid terms.

**[SMT. SADHANA S. JADHAV, J.]**