

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.144 OF 2019

1. Khutbuddin Daud Sayyed, Age 30 years,
Occ.Business, R/o.Haji Malang Pahad,
Tal.Am,bernath, Dist.Thane.

2. Isak Sagir Shaikh, Age 40 years,
Occ.Business, R/o.Lambiwadi Chawl,
Paach Peer Road, Haji Malang Pahad,
Tal.Ambernath, Dist.Thane.

Applicants

versus

The State of Maharashtra

Respondent

Mr.Mohamad.Amin Solkar with Ms.Misbah Solkar for applicants.

Mr.Prashant Jadhav, APP, for State.

Mr.Vinod U. Patil, API, Hill Line Police Station, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 5th March 2019

PC :

1. This is an application for bail under Section 439 of Code of Criminal Procedure, 1973. The applicants are arrested on 18th April 2018 and 7th May 2018 respectively in connection with CR No.I-97 of 2018 registered with Hill Line Police Station, Ulhasnagar for offences under Sections 307, 325, 324, 323, 504, 143, 144, 146, 147, 148, 149 of Indian Penal Code r/w Section 37(1) and 35 of Maharashtra Police Act.

2. The case of prosecution is that the complainant Abdul Suleman Sayyed is running a canteen near Palkitala of Haji Malang Mountain. He has a photo studio and also has binoculars installed at a strategic

point for the devotees to see the surrounding view. It is alleged that accused no.1 also has photo studio near his house and also installed binoculars for the devotees to see the surrounding views. There is business rivalry between them and on several occasions there were quarrels and non-cognizance complaints were lodged against each other with Hill Line Police Station. On 18th April 2018 while complainant was returning after having lunch from his canteen, he was accosted by accused no.1 who abused him and called other accused, who arrived there with weapons like iron pipes, koyta, wooden bamboos and started assaulting the complainant. Accused Rehman was arrested with iron pipe, Daud Shaikh with bamboo, Isak Shaikh and Saddam Shaikh were armed with iron pipe, Ayyub Shaikh with sickle and iron pipe, Hasan Shaikh and Zaqir Shaikh with bamboo. Accused no.5 assaulted by sword on the back of complainant's head. Other accused also assaulted him with respective weapons and on hearing commotion his family members came to the spot of incident and they tried to intervene. They were also assaulted. The complainant and others sustained injuries. Thereafter one Alam and Asif arrived there and took the injured to hospital. The statement of complainant was recorded and FIR was registered on 18th April 2018. On completing the investigation charge sheet has been filed.

3. Learned counsel for applicants submitted that the complainant has not attributed specific overt act to the applicants. It is alleged that the applicants along with others had assaulted the complainant. It is further submitted that there was free fight between the persons holding stalls in the area involving more than fifty persons in which applicant had sustained head injuries and he was taken to hospital. It

is submitted that photograph of the accused Saddam Shaikh posted on the arrest panchanama fortifies the submission that he had sustained head injury. The complaint of the applicants or any person from the side of applicant was not entertained by police. The injury certificate of the injured from applicants group was not collected by police during the course of investigation. It is submitted that police refused to register the counter case against complainant. It is further submitted that taking the case of prosecution as it is, the offence u/s 307 of IPC is not made out. The applicants are in custody from the date of arrest. The investigation is completed and charge sheet is filed. There are no antecedents against applicant. Three of the four accused have been released on bail. Co-accused is granted bail by this Court vide Bail Application No.2519 of 2018 on 14th December 2018. It is therefore prayed that applicants be granted bail.

4. Learned APP submitted that the complainant has attributed role to the applicants. Their presence at the scene of offence has been established. The applicants were the persons who had assaulted the complainant. It is further submitted that four persons had sustained injuries which are serious in nature. There are other eye witnesses to the incident, who had also attributed overt act to the applicants having participated in the crime and assaulted the persons. The co-accused were granted bail on the ground that two of them were senior citizens and third was a juvenile. It is therefore prayed that application be rejected.

5. I have perused the charge sheet. On going through the FIR it is apparent that the incident had occurred on 18th April 2018. The complainant has alleged that the accused have assaulted him. The

complainant has alleged that on account of quarrel he was assaulted by the accused. It appears that there are disputes on account of business rivalry. On perusal of the charge sheet it indicates that there is reference of several persons involved in the fight which had occurred on the date of incident. Other witnesses are primarily family members of the complainant. There is no injury certificate of co-accused Saddam Shaikh on record. I have also perused the injury certificates of the complainant and others. The certificate of Shahrukh Shaikh indicate that he had sustained injuries on his forearm and two of the injuries being grievous and other injuries are simple in nature. The injured Shamiullah Shaikh had suffered injuries which are simple in nature. The third injured person namely Abdul Sayyad had sustained grievous injuries on his over arm and left tibia and forth injured Rukhsana had also sustained injuries and most of them are simple in nature and the grievous injuries were sustained on shaft of tibia (fracture). Thus grievous injuries sustained by the injured persons were not on vital parts. The contention of learned counsel for applicants in the light of nature of injuries and the assault, is that offence u/s 307 of IPC is not made out. The Trial Court at the appropriate stage in trial shall deal with the said issue. However, considering the injury certificates, the role attributed to the applicant, the motive for crime and the fact that applicants are in custody from the date of arrest, having no criminal antecedents and also considering the fact that charge sheet is already filed after completion of investigation, further detention of the applicants is not called for.

6. Hence, I pass following order :

ORDER

- (i) Criminal Bail Application No.144 of 2019 is allowed and disposed off;
- (ii) The applicants are directed to be released on bail in connection with CR No.I-97 of 2018 registered with Hill Line Police Station, Ulhasnagar, on furnishing PR bond in the sum of Rs.25,000/- each with one or more sureties in the like amount;
- (iii) The applicants shall report Hill Line Police Station, Ulhasnagar, once in a month on every first Saturday between 10 am and 12 noon till further orders;
- (iv) The applicants shall not tamper with the evidence and shall attend trial Court proceedings regularly, unless exempted by the Court for some reason.

(PRAKASH D. NAIK, J.)

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