

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.595 OF 2019

Santosh Narayan Kharate, Age 24 years,
R/o.Room No.1, Sadashiv Kamble Chawl,
Near Datta Mandir, Kanur Village (E),
Mumbai-400 042.

Applicant

versus

The State of Maharashtra

Respondent

WITH

CRIMINAL BAIL APPLICATION NO.494 OF 2019

Shailendra Shinde, Age 42 years,
R/o.Room No.4, Mourya Chawl,
Near Datta Mandir, Manjur Village,
Bhandup (W), Mumbai-400 042.

Applicant

versus

The State of Maharashtra

Respondent

Mr.N.V.Sawant for applicants.

Mrs.A.A.Takalkar, APP, for State.

Mr.S.K.Nimbalkar, PSI, Kanjurmarg Police Station, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 5th March 2019

PC :

1. The applicants are arrested on 20th October 2018 in CR No.159 of 2018 registered with Kanjurmarg Police Station for offences under Sections 307, 452, 143, 144, 147, 148, 149, 307, 323, 427, 504, 506 of Indian Penal Code.

2. The FIR was lodged on 20th October 2018. The complainant has alleged that the accused were burning fire crackers on account of Dasara festival during immersion of idol of Durga, which was objected

by the complainant. It is alleged that thereafter about 10 to 12 persons started quarreling with the complainant. On 20th October 2018 complainant was sleeping at his house and at that time the accused forcefully entered into the house of complainant and he was assaulted. Allegedly some of them were armed with weapons. One of them assaulted him by sword. He was taken to hospital as he had sustained injury to head. On completing investigation charge sheet is filed. The advocate for applicant submits that no specific overt act has been attributed to the applicants. There is no recovery of any weapon from the applicants. There is no strong evidence to show involvement of the applicant in crime. The injured was discharged from hospital immediately.

3. Learned APP submitted that the applicants are identified by the complainant. The statement of one of the witnesses indicate that the applicant no.2 had inquired with him about address of complainant. The CCTV footage shows that both the applicants were present at the place of incident. The applicants are identified after 55 days from date of incident. Parade was faulty. The complainant has given role of assault by sword to one person whereas he has identified six persons.

4. The investigation is completed and charge sheet is filed. The complainant has stated that several persons had entered into his premises and he was assaulted. Although applicants are identified, in the statements recorded after identification parade, the complainant has stated that the applicants are the persons who had come with other persons to assault him. He had not attributed any specific overt act to the applicants or that the applicants have assaulted him. The CCTV footage at the most would indicate that applicants were present in the vicinity. The CCTV is installed on the road near the house of complainant and the applicants are seen in the said CCTV footage. I

have also perused the injury certificate which shows that the complainant had sustained one incise wound at the left side of parietal region and injury on the right eye. The applicants are in custody from 28th October 2018 and there are no criminal antecedents against them. Hence, case for grant of bail is made out.

5. Hence, I pass following order :

ORDER

- (i) Criminal Bail Application No.595 of 2019 and Criminal Bail Application No.494 of 2019 are allowed and disposed off;
- (ii) The applicants are directed to be released on bail in connection with CR No.159 of 2018 registered at Kanjurmarg Police Station, 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 Kanjurmarg Police Station once in a month on every first Saturday of the month between 11 am and 1 pm till further orders;
- (iv) The applicants shall not tamper with evidence and shall attend Trial Court proceedings regularly, unless exempted by the Trial Court for any reason;
- (v) The applicants are permitted to furnish cash security in the sum of Rs.25,000/- each for a period of six weeks.

(PRAKASH D. NAIK, J.)

MST