

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

CRIMINAL BAIL APPLICATION NO.2101 OF 2019

Afzal Khan Iqbal Khan @ Afzal Atadi & Ors. Applicants

versus

The State of Maharashtra Respondent

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- Mr.Sudarshan Salunkhe i/b. Prabhanjan Gujar, Advocate for Applicants.
- Mr.Rajan Salvi, APP for the State/Respondent.
- API Mr.Shakeel Rashid Shaikh, Pawarwadi Police Station, Malegaon, present.

**CORAM : SARANG V. KOTWAL, J.
DATE : 06th AUGUST, 2019**

P.C. :

1. The Applicants are seeking their release on bail in connection with C.R.No.I-96-18 registered with Pawarwadi Police Station, Malegaon, under sections 302, 143, 147, 148, 149, 323, 504, 506 of the Indian Penal Code.

2. The FIR is lodged on 17/09/2018 by one Mohd. Umar Fazal Mohd. He has stated in the FIR that in the year 2015 the

accused No.1 Sayyed Saeed Sayyed Rashid had outraged modesty of the informant's sister and therefore his sister had lodged FIR on 01/12/2015 against said Sayyed Saeed. The present Applicant Nos.2 and 3 are brothers of Sayyed Saeed and Applicant No.1 is the maternal uncle of Sayyed Saeed. It is alleged in the FIR that family members of Sayyed Saeed were pressurizing the informant's family to withdraw the case and they used to issue threats. On 15/09/2018 the informant and his father Fazal Shaikh were travelling on motorcycle, from the factory to their house. When they reached Raza Masjid, they were intercepted by seven accused including the present Applicants. It is further alleged that the accused Sayyed Saeed assaulted the father of the informant on his head with wooden stick. The Applicant Nos.2 and 3 assaulted the informant's father with wooden stick on his leg. The other accused also assaulted him with iron rods on leg and head. It is alleged that the present Applicant No.1 assaulted the informant's father with kicks and fist blows. The accused were targetting informant as well, therefore he ran away from the spot. When he came back to the

spot, his father was already removed to the hospital. He was initially taken to Civil Hospital, Malegaon and thereafter to Civil Hospital, Dhule. Thereafter he was taken to Mumbai. But the informant's father died on the way. Thereafter this FIR was lodged.

3. The investigation is carried out and the charge-sheet is filed.
4. Heard learned Counsel Mr.Sudarshan Salunkhe for the Applicant and learned APP Mr.Rajan Salvi for the State.
5. The learned Counsel for the Applicants submitted that the main role of assault on head of the deceased is attributed to the accused No.1 Sayyed Saeed and therefore at this stage it cannot be said that any of the Applicant had committed offence of murder. He further submitted that in any case, the Applicant No.1 has only assaulted with kicks and fist blows. He has not used any weapon. He further submitted that the manner in

which the incident is described, the deceased would have suffered many more injuries. However, the post-mortem notes show that he had suffered one blunt contusion on head. Both legs were fractured and right hand was fractured near elbow.

6. Learned APP on the other hand submitted that specific role is given to all the Applicants. The Applicants had formed unlawful assembly with other accused and therefore at this stage section 149 of IPC is clearly attracted. He further submitted that therefore the Applicants do not deserve any leniency.

7. I have considered these submissions. Apart from the first informant there are two more eyewitnesses namely Mohd. Mobin Abdul Wahid and Firoz Khan Subhe Khan. Their statements were recorded on 22/09/2018 and 23/09/2018 respectively. They have stated that they had seen all the accused including the present Applicant assaulting the deceased Fazal Shaikh with iron rods and wooden sticks.

8. The presence of all the Applicants is mentioned by the informant as well as two witnesses. The other eyewitnesses have given a general role to all the accused. However, the first informant was specific and he has given specific role to seven accused including the present Applicants. His version in respect of Applicant Nos.2 and 3 that they assaulted on the legs of the deceased is corroborated by the post-mortem notes, which shows that the deceased had suffered fracture of his legs. Therefore, at this stage, there is sufficient material against these Applicants. Therefore I am not inclined to grant them bail.

9. As far as Applicant No.1 is concerned, the only role attributed to him is that he had assaulted the deceased with kicks and fist blows. He was not even carrying any weapon. Whether he was a part of the unlawful assembly and whether section 149 of IPC is attracted against him, will have to be decided during the trial. However, considering the fact that he has not used any weapon and had not assaulted the deceased on any vital part, at this stage, his role can be differentiated from

the others. It is made clear that the applicability of section 149 of IPC against him shall be decided during trial. At this stage, I am inclined to grant bail to Applicant No.1. Hence, the following order :

ORDER

- (i) Application of Applicant Nos.2 and 3 is rejected.
- (ii) The Applicant No.1 Afzal Khan Iqbal Khan @ Afzal Atadi is directed to be released on bail in connection with C.R.No.I-96-18 registered with Pawarwadi Police Station, Malegaon, on his furnishing PR bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.
- (iii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)