

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

CRIMINAL BAIL APPLICATION NO.3415 OF 2018

Shahadat Shabbir Shaikh @ Yado .. Applicant

Vs.

State of Maharashtra .. Respondent

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Mr.S.R. Pathak i/b. Mr.Rajeshkumar Salpuram, Advocate for the Applicant.

Mr.Prashant Jadhav, APP for the Respondent - State.

PSI Shivane Sambhaji Laxman, Antop Hill Police Station, Mumbai, present.

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CORAM : PRAKASH D. NAIK, J.

DATED : FEBRUARY 8, 2019.

P.C. :

This is an application for bail in connection with C.R.No.43 of 2016, registered with Antop Hill Police Station, Mumbai, for the offences punishable under Sections 143, 144, 147, 148, 149, 153, 435 and 307 of Indian Penal Code ("IPC", for short).

2 The case of the prosecution is that the accused and their associates came with the lighted bottles of kerosene and petrol and some of them were having chopper in their hands.

They formed unlawful assembly. They lighted bottles with fire and threw it on houses of residents. The accused shouted that the entire area belongs to him and there has to be terror in the area in the minds of the residents. He also shouted the persons in the area and directed to throw lighted bottles on the houses of the residents. Informant and other persons standing at the place were frightened and tried to run away. Some of the persons got injured in the fire and there was damage to property.

3 Learned counsel for the applicant submits that the offence under Section 307 of IPC is not made out in this case. The injured had not sustained serious injuries to attract the said provisions. The overtact of throwing burning bottles is attributed to other accused. Applicant is in custody from the date of arrest. Investigation is completed and charge - sheet is filed. Reliance is placed on the decision of Supreme Court in the case of ***Bhauasaheb Nagu Dhavare Vs. State of Maharashtra***¹.

4 Learned APP submits that the applicant is the gang leader. He had created terror in the locality. He is instrumental in instigating his associates in committing the crime. The trial has

1 (SC) 2001-3-107

already commenced and the prosecution has examined six witnesses and prosecution intend to examine 10 witnesses. There are six cases registered against the applicant. Learned counsel for the applicant, however, submitted that bail can be granted to the applicant on certain conditions. The applicant is on bail in other case. Learned counsel for the applicant that in most of the cases the applicant has acquitted and he was juvenile at the time of commission of offence. It is apparent that the applicant has played major role in the crime. The trial has already commenced and six witnesses have been examined. In the circumstances, no case for grant of bail is made out and bail application is rejected.

5 It is clarified that the observations made in the order are only for considering the present application and the trial Court shall not be influenced by the same. Bail Application stands disposed of.

(PRAKASH D. NAIK, J.)