

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

CRIMINAL BAIL APPLICATION NO. 219 OF 2020

Nadim Salim Shaikh

...Applicant

Versus

The State of Maharashtra

...Respondent

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Mr. Aniket Nikam i/b. Vivek N. Arote, Advocate for the Applicant.

Smt. A. A. Takalkar, APP for the Respondent – State.

API – G. U. Tayade, Manmad Police Station, Nashik Rural, present.

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CORAM : PRAKASH D. NAIK, J.

DATE : 24th FEBRUARY, 2020

PC :

1. The applicant is seeking bail in connection with C.R. No.172 of 2018, registered with Manmad Police Station, Nashik for the offences punishable under Sections 302, 120-b, 307, 324, 323, 452, 143, 147, 148, 149, 504, 506, 427 r/w. 34 of Indian Penal Code, 1860 ('IPC' for short) and under Section 7-A of Criminal Law Amendment Act, 1995 and under Section 4(25) of Arms Act.

2. The case of the prosecution is that, on 25th September, 2018, one Iliyas Sayyed and others hatched conspiracy and called the applicant and other accused at Ekta Nagar. The accused were armed with weapons such as sticks, chopper, rod, iron pipes and sword, created terror at Ekta Nagar, caused damage to the vehicles and

assaulted complainant's husband. He died during medical treatment. The First Information Report ('FIR' for short) was lodged on 25th September, 2018. On completing investigation, charge-sheet is filed.

3. The applicant was arrested on 12th October, 2018. He was remanded to the custody from time to time.

4. The applicant preferred an application for bail before the Sessions Court, which has been rejected on 8th August, 2019.

5. Learned counsel for the applicant submitted that, the applicant has been falsely implicated in this case. The alleged incident had occurred on 25th September, 2018. According to the complainant, several persons were assailants. Some of them were armed with weapons. Some of them had also assaulted deceased and some of them has caused damage to the properties. Thirty persons are allegedly involved in the incident of assault and causing damage to the properties. The applicant has been arrested in this case. The complainant has referred to involvement of Nadeem Seth as the person who had participated in the alleged offence. The applicant is not Nadeem Seth. The applicant is Nadeem Salim Shaikh. This is the case of mistaken identity. There is nothing on record to establish that applicant is Nadeem Seth. There is no other corroborative evidence against the applicant. The Co-accused are granted bail. The applicant

is in custody since the date of arrest. Even to the person named as Nadeem Seth, no specific act is attributed. The complainant has exaggerated the incident, hence bail may be granted to the applicant.

6. Learned APP submitted that, the applicant is involved in crime. He has been rightly arrested in this case. The person named as Nadeem Seth and the applicant is the same person. The claim of mistaken identity has been raised by the applicant belatedly. The contention is after thought. The applicant has not denied that his first name is Nadeem. The applicant is involved by the eye witnesses to the incident.

7. According to the complainant, her husband was assaulted due to previous enmity. The complainant has named Nadeem Seth, as one of the person, who was armed with weapon, and participated in the assault. The victim was brutally assaulted. The accused created terror in the area. The role assigned to the co-accused who has been granted bail can be distinguished. They were not named in FIR. They were not attributed specific overtact. Nadeem Seth has been referred by the eye witnesses to the incident. The contention that Nadeem Seth is a different person is raised for the first time in this application. It will be a matter of defence. It will have to be agitated at the time of trial. The statement of witnesses

and the complainant also mention that the applicant is resident of Sikandar Nagar. The defence of mistaken identity is apparently after thought. In the application for bail preferred before the Sessions Court, the applicant has not disputed his identity. On the contrary in the application, it is stated that, the applicant being relative of accused No. 1, has been falsely implicated in this case. It was also contended that he is the driver and he was not present at the place of incident. There is no specific allegation against the accused. There is no prima-facie case made out against the accused. Statement of witnesses show, involvement of the accused, is nothing but abuse of process of law. Thus, the applicant proceeded with the case that he has been falsely implicated in this case, however, for the first time, the ground of mistaken identity is raised. Considering the involvement of the applicant, no case for grant of bail is made out.

8. Hence, I pass the following Order:

ORDER

- i) Bail Application No. 219 of 2020, is rejected and stands disposed of accordingly.

(PRAKASH D. NAIK, J.)