

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 2835 OF 2019

Abdul Qayyum Abdul Majid Khan ...Applicant

 V/s

The State of Maharashtra ...Respondent

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Mr. Yadav P. R. a/w Ms. Sarita Vishwakarma, Advocate for the Applicant.

Mr. S. H. Yadav, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 17th February, 2020

PC :

1. This is an application for bail under Section 439 of Cr.P.C. in connection with C.R. No. I-172 of 2018 registered with Manmad City Police Station, Taluka Nandgaon, Dist. Nashik, for offences punishable under Sections 302, 120(B), 307, 324, 323, 452, 143, 147, 148, 149, 504, 506 & 427 r/w Section 34 of Indian Penal Code. The applicant was arrested on 25th September, 2018.
2. The prosecution case is that the deceased Sameer @ Papa Noor Shaikh was a Tea vendor at Manmad Railway Station. There was enmity between the nephew of the deceased and Ilias Sayyed, Irfan Sayyed, Imran Sayyed, and Ismail Sayyed over Tea vending business at Manmad Railway Station. On 20th September, 2018 at about 11.35

p.m. altercation took place between the parties. On 25th September, 2018 at about 10.00 p.m., Irfan, Imran, Wasim Bambaiwala, Jamir Sayyed entered into the house of the complainant and abused her. They dragged her husband out of the house. Irfan Sayyed, Imran Sayyed, Wasim Bambaiwala, Raju Sayyed, Ajju Sayyed, Samir Sayyed, Jamir Sayyed, Khalil Sayyed, Amajad Khan Karim Khan, Iqbal Tirewala, Jafer Sayyed, Salim Sayyad, Imran Khan Karim Khan, Soyeb Habib Shaikh, Bhaiya Salim Sayyed, Nadim Seth & 15 to 20 other persons who were armed with sticks, wooden logs, swords, chopper, iron pipe, and rod. All of them assaulted the complainants husband by weapons on his head and legs. Complainants nephew Arbaj Shaikh intervened, however he was assaulted by wooden logs and iron rod. The accused also caused damage to the property. They assaulted the people from the area caused damage to the vehicles. They created terror in the area. Thereafter they ran away from the place of incident. Hence, the FIR was lodged on 26th September, 2018.

3. The applicant was arrested and investigation proceeded. On completing investigation charge-sheet is filed. There are no criminal antecedents against the applicant.

4. Learned advocate for the applicant submitted that there is no

evidence to establish that applicant had participated in the assault. He has not been named in the FIR. The parade conducted on 6th October, 2018. In pursuant to the parade, supplementary statement of the witnesses were not recorded to specify what role was played by the applicant.

5. Learned APP submitted that the applicant was part of unlawful assembly. The offence is of serious nature. Several persons had gathered together. They were armed with weapons. They created terror in the area. The deceased was assaulted with weapons. The applicant was being identified by three witnesses namely Vinod Patil, Sachin Wagh & Irfan Yakub. The weapons were recovered from the vehicle at the time of Nakabandi. The weapons used and recovered were wooden log, iron rod and sword.

6. I have perused the charge-sheet. The incident had occurred on 25th September, 2018. The parade was conducted on 6th October, 2018. The complainant (wife of the deceased) had named some of the accused and has also stated that 15 to 20 other persons were involved in the crime. However, there is no identification of the applicant by the complainant. The complainant was not put up for Test Identification Parade. The prosecution relied upon statements of three eye witnesses. The said witnesses had referred to assault by

some known and unknown persons. Applicant was unknown person. However, after the parade was conducted they have not specified role played by the applicants. Their supplementary statement was not recorded. On perusal of the statement of witnesses, it is apparent that they have referred to involvement of 30 to 40 persons as assailants. The role assigned to the unknown persons is vague. There are no criminal antecedents against the applicant. There is no other incriminating evidence against the applicant. There is no recovery of weapon personally from the applicant. The eye witnesses have attributed specific overt act to the assailants and no specific overt act is attributed to the unknown persons. The applicant is in custody from 25th September, 2018. Considering these circumstance, case for grant of bail is made out.

7. Hence, I pass the following order :

ORDER

- i) Bail Application No. 2835 of 2019 is allowed;
- ii) The applicant is directed to be released on bail in connection with C.R. No. I-172 of 2018 registered with Manmad City Police Station, Taluka Nandgaon, Dist. Nashik, on furnishing PR. bond in the sum of Rs. 25,000/- with one or more

sureties in the like amount;

- iii) The applicant shall report concerned police station once in a month on every first Saturday between 11.00 a.m. to 1.00 p.m.
- iv) The applicant shall not tamper with the evidence;
- v) Bail Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)