

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

923 BAIL APPLICATION NO.1575 OF 2020
WITH APPLN/87/2021

SHAHROUKH SHAIKH S/O KALIM PATVE AND OTHERS

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. S.S. Kazi, Advocate for applicants

Mr. N.T. Bhagat, APP for respondent

Mr. G.R. Syed, Advocate for assist to APP

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 15th JANUARY, 2021.

ORDER :

1 Criminal Application No.87 of 2021 moved for assist to APP is allowed and disposed of.

2 Applicants have been arrested, in connection with Crime No.807/2020 dated 13.09.2020 registered with Nandurbar City Police Station, Dist. Nandurbar, for the offence punishable under Section 302, 307, 324, 323, 427, 452, 504, 506, 143, 147, 148, 149 of the Indian Penal Code and under Section 37(1)(3) read with Section 135 of the Maharashtra Police Act. Hence, they have filed the present application under Section 439 of the

Code of Criminal Procedure, 1973.

3 Heard learned Advocate Mr. S.S. Kazi for applicants and learned APP Mr. N.T. Bhagat for respondent/State.

4 It has been vehemently submitted on behalf of the applicants that even if the contents of the First Information Report are taken as it is; yet, it can be seen that the applicants are not responsible for death of one Harun Yusuf Qureshi. As per the contents of the FIR, one Nazim Kalim Patve had pelted stone on the chest of Harun, as a result of which, Harun had become unconscious at the spot. Thereafter, he was shifted to hospital. However, during treatment he expired. Said Nazim is not before this Court in this application. As regards the present applicants are concerned, the informant contend that all the accused persons had attacked his house when they were armed with sticks, iron rod and pipe. At one place it is stated that some of the accused persons cumulatively assaulted with sticks to injured persons including the informant. Others had manhandled the injured and even deceased Harun. Applicant No.2 Naeem had assaulted one Shahdab with iron pipe. All the accused persons had destroyed two vehicles, abused and threatened the informant and witnesses. Now, the investigation is over and charge sheet has been filed, therefore, the physical custody of the present applicants is not required for the purpose of investigation. The Post Mortem

Report of the deceased would show the cause of death as due to Blunt chest trauma (unnatural). Even if it is taken that Harun's death is homicidal in nature, yet, even as per the contents of the FIR and the statements of the witnesses, it was due to the alleged act of throwing stone on the chest of deceased by accused Nazim. As regards other injured persons are concerned, the injury certificates show that they have received only simple injuries, and therefore, the further physical custody of the present applicants is not required. They are ready to abide by the terms of the bail.

5 Per contra, the learned APP, well assisted by learned Advocate Mr. G.R. Syed for the informant, strongly opposed the application and submitted that the overt act on the part of the present applicants can be seen; yet, it is said that the applicants had attacked informant and his family members at about 10.30 p.m. by entering into the house of the informant. Weapons used in the commission of the crime are the sticks, iron rod and iron pipe. When all of them had come together, it can be said that they had formed unlawful assembly to commit crime and in furtherance of their common object they had entered the house of the informant, assaulted the informant and others including the deceased. The applicants cannot get away by saying that the death of Harun is due to the act of Nazim.

6 At the outset, it is to be noted that even as per the contents of

the FIR it appears that an incident had earlier taken place at about 8.00 p.m. on 12.09.2020, on account of flying kites. But then the informant has stated that the other side has gone to Police Station to lodge report and he had also followed them. There was mediation at the Police Station and the dispute was settled. Then he says that at about 10.30 p.m. in all 12 persons including the present applicants came to his house, armed with sticks, iron pipes and iron rods, pelted stones on his house and by entering into the house the applicants and others had started assaulting informant, his mother, maternal uncle and aunt. Thereafter, the informant was dragged outside the house and then he was assaulted with sticks. His uncle was assaulted by some of the present applicants and then the accused Nazim lifted stone lying by the side and hit it on the chest of Harun, as a result of which Harun became unconscious on the spot. Thereafter, applicant No.2 Naeem assaulted Shahdab Qureshi with iron pipe. Two vehicles were damaged. Accused persons had abused and threatened the informant and others. Other persons from the same vicinity came and intervened. Thereafter, accused persons left the spot. Harun was shifted to hospital, but then succumbed to his injuries while undergoing treatment.

7 It will not be out of place to mention here that from the side of the accused it appears that complaint has been lodged against the informant

and his relatives. It may not be permissible, at this stage, to go into the contents of that proceedings. However, only a fact is required to be noted that in that FIR also it is stated that the informant and his relatives had assaulted the accused persons. The reason, as to why two groups fought with each other, appears to be trifle in nature i.e. on the point of flying kites. Now, as regards death of Harun is concerned, it is to be noted that even as per the contents of the FIR as well as statements of the witnesses it was due to the throwing of stone by Nazim, who is not before this Court. As regards role attributed to the present applicants are concerned, it is either assault by iron rod or sticks or by means of manhandling, but at the same time, we are required to see that the medical certificates of the informant and other injured witnesses are concerned, all of them are stated to have received simple injuries, and it has not been pinpointed by the learned APP as to on the basis of which statement and injury certificate it can be said that ingredients of Section 307 of the Indian Penal Code are also attracted. The documents on record do not show application of Section 307 of the Indian Penal Code against the present applicants. Thereafter, the remaining sections are concerned, sufficient opportunity has already been given to the Investigating Officer to make investigation and accordingly after investigation was over charge sheet has been filed. There is no possibility of applicants getting absconding, and therefore, as per the parameters laid down in various

catena of Judgments of the Hon'ble Supreme Court as well as this Court, the application deserves to be allowed with stringent conditions. Hence, following order.

ORDER

1 Application stands allowed.

2 Applicants viz. 1) Shahrukh Shaikh s/o Kalim Patve, 2) Naeem Shaikh s/o Kalim Patve, 3) Sameer Shaikh s/o Kalim Patve, 4) Altamash Shaikh s/o Kalim Patve, 5) Shaikh Salim Abul Hasan @ Muna Isak Patve, 6) Mohsin Kalim Patve and 7) Kalim Patve @ Shaikh Kalim s/o Shaikh Kasam Patve, who have been arrested, in connection with Crime No.807/2020 dated 13.09.2020 registered with Nandurbar City Police Station, Dist. Nandurbar, for the offence punishable under Section 302, 307, 324, 323, 427, 452, 504, 506, 143, 147, 148, 149 of the Indian Penal Code and under Section 37(1) (3) read with Section 135 of the Maharashtra Police Act, be released on PR. of Rs.25,000/- (Rupees Twenty Five Thousand only) each with one solvent surety in the like amount.

3 The applicants shall not tamper with the evidence of the prosecution, in any manner.

4 They shall not indulge in any criminal activity.

5 If they commit any breach of above terms of bail, the prosecution is at liberty to move the Trial Court under Section 439(2) of the Code of Criminal Procedure for cancellation of bail.

6 They shall not enter the jurisdiction of Nandurbar till the conclusion of trial. They should reside elsewhere, and before submission of bail papers, the applicants should give complete address of their proposed residence with their mobile number. So also they should comply with the requirements under paragraph Nos.12 (1) to (6) of Chapter I of Criminal Manual, (whichever are applicable).

7 Bail before Trial Court.

(Smt. Vibha Kankanwadi, J.)

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