

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.784 OF 2021

ILIYAS ISMAIL SAYYED

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.Aabad Ponda, Senior Advocate i/b. Mr.Milan Hebballi,
Advocate for the Applicant.

Mr.Ameet A. Palkar, APP for the Respondent – State.

CORAM : V. G. BISHT, J.

RESERVED ON : 26th OCTOBER 2021
PRONOUNCED ON : 15th NOVEMBER 2021

P.C. :

1 The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No.172 of 2018 registered with Police Station Manmad, Nashik, for offences punishable under Section 302, 120(B), 307, 324, 323, 452, 143, 147, 148, 149, 504, 506, 427, 212, 34 of the Indian Penal Code (IPC) along with Section 4/25 of Arms Act.

2 It is the case of prosecution that informant's husband namely, Sameer Shaikh (Pappya) (since deceased) had a business of tea stall at Manmad Railway Station. For many years there was enmity / dispute over tea stall business between Iliyas Ismail Sayyed (applicant), Irfan Ismail Sayyed, Imran Ismail Sayyed, Ismail Musal Sayyed along with nephew Irfan Momin. These persons had a small quarrel over some issue of children on 20th September 2018 around 11.45 p.m.

3 On 25th September 2018 at about 10.00 p.m., informant, her husband and children were taking dinner. All of a sudden the informant heard some one shouting and abusing deceased. It is further alleged that accused namely Irfan Ismail Sayyed and other 15 accused named in the First Information Report (FIR) along with 15 to 20 persons armed with sticks, swords, choppers, iron pipe, rods started assaulting the deceased on his head, hands and legs. When the nephew of deceased tried to intervene and save the deceased, he was also assaulted. Those accused also beat people who were seen outside and vandalized

and destroyed vehicles outside the house. Thereafter, they fled away in vehicles.

4 Mr.Aabad Ponda, learned senior counsel for the applicant, submits that the applicant was not an assailant, so was his father, who has been released on bail by the learned trial Court. According to the learned senior counsel, like father applicant is also similarly situated. The learned senior counsel invited my attention to the contents of the FIR and forcefully submitted that it is not the case of prosecution that the applicant was also involved in the incident. The learned senior counsel then took me through statements of prosecution witnesses and would submit that the name of applicant is nowhere revealed by any of the prosecution witnesses. Therefore, the applicant deserves to be enlarged on bail, argued learned senior counsel.

5 Mr.Ameet Palkar, learned APP, on the other hand, opposed the submissions by contending that as an earlier dispute had taken place on 20th September 2018, there was thus motive

on the part of accused named in the FIR, who at the instance of applicant and others indiscriminately assaulted the deceased and others. The learned APP also invited my attention to the statement of Deepak Baburao Sanap in support of his submissions and concluded that there being no merit in the application, the same is liable to be rejected.

6 I have gone through the investigation papers. If the FIR is read carefully, one finds no role at all attributed to the applicant. It does not utter a single word as to the alleged involvement of the applicant in the incident. I have also gone through the supplementary statement of the informant but then again I am not able to see the name of the present applicant or his role as one of the assailants as is claimed by the prosecution. However, there is a statement of one Arifa Javed Wahid Shaikh. His statement shows that he is son-in-law of the deceased. The deceased was dragged by 8/10 people and they were assaulting by means of swords, sticks, hammers. Although the deceased was pleading that he should not be killed but those persons were

not in a mood to listen and after the incident was over, they rang up and uttered “इस्मैल् मामु काम् पुरा हो गया, इफ़्रान् नहिन् मिला, इलियास् भाइ काम् पुरा हो गया”. From these utterances prosecution wants to convey that Ismail and Iliyas to whom the said person had telephoned are none other than the accused herein. Of them, I may state here, that Ismail Sayyed has already been admitted on bail by the trial Court whereas Iliyas is now before me. If it is to be presumed that these two persons are the same as named in the FIR, even assuming it to be so, it cannot be conclusively inferred that the whole incident took place at the instance and command of these two accused or that they, in any manner, engineered the incident in question by sitting at a remote place.

7 Similarly, there are statement of other prosecution witnesses namely Javed Abdul Wahid Shaikh, Arbaz Abdul Wahid Shaikh, Rahul Namdeo Dhole, Rahul Ambadas Sable, Shaikh Zameer Abdul Wahid. But again their statements do no reflect involvement of the present applicant.

8 As against above, the prosecution has relied on the statement of Deepak Baburao Sanap. Statement of this witness shows that accused Imran, Iliyas (applicant), Irfan, Wasim were also armed with swords and they were abusing. Interestingly, no other prosecution witness has named the name of the present applicant to be one of the assailants.

9 Thus, having regard to the material on record, in my considered opinion, the applicant has made out a case for bail. Hence, the following order :

ORDER

- (i) Applicant – Iliyas Ismail Sayyed shall be released on bail in Crime No.172 of 2018 registered with Police Station Manmad, Nashik, on his executing PR.Bond in the sum of Rs.25,000/- with one or two sureties in like amount.
- (ii) The applicant shall not tamper with prosecution evidence.

- (iii) The applicant shall attend the concerned police station as and when called by the Investigating Officer.
- (iv) Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.
- (v) The application is allowed in the aforesaid terms and stands disposed off accordingly.

(V. G. BISHT, J.)