

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

BAIL APPLICATION NO. 3393 / 2019

Azhar Raizuddin Qureshi

.....**Applicant**

V/s.

The State of Maharashtra

....**Respondent**

* * * *

Mr. Satyam Nimbalkar, Advocate for the applicant.

Mr. Yogesh Dabke, APP for State.

PSI, Dada K. Pawar from Kondhwa Police Station present.

CORAM : SANDEEP K. SHINDE, J.

Thursday, 11th March, 2021.

P.C.:

1. Heard learned Counsel for the applicant and learned APP for State.

2. Perused the chargesheet. Applicant seeks his enlargement on bail in connection with Crime No. 396/2017 registered with Kondhwa Police Station, for the offences

punishable under Sections 302, 324, 323, 504 read with Section 34 of the Indian Penal Code and Sections 37(1) read with Section 135 of the Maharashtra Police Act. Applicant was arrested on 5th October, 2017.

3. Briefly stated, the prosecution case is that, applicant and the co-accused were office bearers of Aditansh Co-operative Housing Society at Kondhwa. At the material time, the applicant was the Treasurer of the said Society. There were disputes between the Society and Rafik Babu Shaikh in respect of a basement parking allotted to Rafik Shaikh. Applicant being the office bearer of the Society had filed complaints against Rafik Shaikh, wherein enquiry was held and the statements of office bearers were recorded as could be seen from the letter dated 10th February, 2017 addressed by the Public Relations Officer to the office bearers of Aditansh Co-operative Housing Society. Indisputedly, Rafik Shaikh was occupying a tenement/a parking space in the Society of

which the applicant was the Treasurer. It appears from the correspondence that, there were frequent quarrels between Rafiq Shaikh and the office bearers of the Society. It appears, one Altaf Razzak Shaikh was supporting Rafik Shaikh over a dispute with the Society. On the backdrop of these facts, it is alleged that, on 5th October, 2017 applicant and three office bearers of the Society, initially assaulted Aaisar (son of complainant), whereupon the complainant called his another son namely, Akib. It is alleged that, Aaisar and Akib were assaulted by the applicant and three co-accused persons. The alleged incident, as per the complaint, had occurred at around 11.45 a.m. in the compound of the Society. The complainant alleged, the applicant inflicted knife blows on Akib while co-accused held him from back. Whereafter complainant, Rafiq Shaikh and Aisar shifted, Akib in Satyanand Hospital at Kondhwa and thereafter to Ruby Hospital at Wanvadi. On admission, Akib was declared dead. The incident was

report by Akib's father, whereupon the subject crime came to be registered at 17:81 hrs i.e. nearly six hours after the incident.

4. The learned Counsel for the applicant submits that, it is the case of false implication on account of, subsisting dispute between the office bearers of the Society and Rafiq Shaikh. It is submitted that the material demonstrates, a huge mob had gathered at Society compound, where a free fight broke-out. It is submitted that, at the material time, neither Altaf (complainant) nor Rafiq Shaikh nor Aisar were present at the spot. In support of this submission, learned Counsel would invite my attention to a Inquest panchanama of the deceased Akib, made at 5.45 hrs on 5th October, 2017. It shows, Akib was brought to Ruby Hospital by his friend, Wasim Amar Sayed. Besides, it also shows, when enquired, the relatives of the deceased informed, that 'unknown' person, had inflicted blows on, Akib by a sharp weapon. Thus, prima-

facie, the evidence suggests that Akib was not brought to the Hospital either by complainant or by Rafiq Shaikh or by Aaisar. It may be stated that, evidence shows Aaisar (other son of the complainant) was brought in the Hospital on 5th October, 2017 at 4:15 p.m for treatment. Therefore, material on record suggest, that neither complainant nor Aaisar were present on the spot of the incident. In the backdrop of these facts, Mr. Dabke, the learned APP was directed to produce MLC No. 863/2017 to ascertain as to who had brought Akib to the Hospital. Today, Mr. Dabke, has produced MLC No.863/17; however, it relates to some other patient. Be that as it may, the evidence prima-facie, shows the complainant had not brought Akib to the Hospital.

4. The next contention advanced by Mr. Nimbalkar is that the evidence shows, at the material time, huge mob had gathered at the Society's premises. In support of this

submission, he has relied on the Station Diary Entry No.27 dated 5th October, 2017. It shows that, on 5th October, 2017 around 30 to 40 persons had gathered at and near 'Welcome Hall' i.e. the spot of incident. The next document is the intimation of the occurrence given, by the wife of the co-accused to the Police Control Room. It is at page-165 of the paperbook. It shows, Zarine Inamdar (wife of the co-accused) informed the Police, the incident at 11.51 hrs. Upon reading this document, it could be gathered that, a mob had assembled at the Society premises where free fight broke-out. Yet, another document is the statement of the wife of the applicant, which also suggests that, at the place of the incident, a huge mob had gathered.

. In consideration of the material on record, the assertion of the complainant that his son was assaulted by the applicant and the co-accused, who were four in number, is uncertain and doubtful. Besides, there is no acceptable explanation on record, to satisfy as to why the FIR was

registered at 5:00 p.m. though the incident of assault had occurred at 11.45 hrs and moreover, when father and brother were present on the spot. Besides, the evidence discussed above, the statement of Dr. Shukla recorded on the next day of the incident suggest that, he runs a Charitable Dental Hospital in the Shop No.2 of the Society premises. He, had given first aid to a person who was lying in a pool of blood. Her statement does not indicate or suggests, the presence of the complainant or of Rafiq Shaikh.

5. Per-contra, learned APP has relied on the statement of applicant's wife recorded on 7th October, 2017 wherein she stated, that her husband was keeping a knife with him for his self protection. Relying on this statement, Mr. Dabke, the learned APP submitted that the injuries on the person of Akib corresponds to injuries inflicted by knife.

7. In view of the facts of the case and the material on record, prima-facie it appears, the incident was neither seen either by father of Akib nor by Rafiq nor by Aaisar. The evidence suggests, huge mob had gathered at the premises of the Society and as such there, is no other evidence on record, except the statement of the complainant, attributing role to the applicant of inflicting knife blows on the person of Akib. Evidence, prima-facie, shows Akib was not admitted in the hospital by his father (complainant) or by his brother. Assuming they were present, then FIR was lodged six hours after the incident. Thus, prima-facie, I am of the view that, the prosecution has not placed full and correct facts before the Court. It may also be stated that, there are no criminal cases at his discredit. Other co-accused have been released on bail by this Court or by Sessions Court. Application is therefore allowed on the following terms and conditions :

ORDER

(i) The applicant arrested in Crime No. 396/2017 registered at Kondhwa Police Station, shall be released on bail on executing P.R. bond for the sum of Rs.30,000/- (Rs. Thirty Thousand only) with one or more sureties in the like sum.

(ii) The applicant shall report to the Investigating Officer on second and fourth Monday of each Month between 11:00 to 1:00 p.m. commencing from March, 2021 and co-operate in the investigation.

(iii) The applicant shall furnish his permanent residential address and contact number to the Investigating Officer forthwith within a week of his release from jail.

(iv) The applicant shall not tamper with the evidence or attempt to influence or contact the

complainant, witnesses or any person concerned
with the case.

8. The application is accordingly allowed and
disposed off.

9. It is made clear that, observations made
hereinabove, shall be construed as expression of opinion for
the purpose of granting bail only and the same shall not, in
any way, influence the trial in other proceedings.

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Sawant
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signed by
Neeta S.
Sawant
Date:
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(SANDEEP K. SHINDE, J.)