

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO.424 OF 2022

1. Husain Papa Shaikh
2. Faisal Kausar Pathan
3. Sagar Kabir Gaikwad
4. Anand Jivan Pethe
5. Kalim Gafur Qureshi ..Applicants

VERSUS

The State of Maharashtra
Through Police Station Osmanabad (City),
Dist.Osmanabad. ..Respondent

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BAIL APPLICATION NO.425 OF 2022

Khalil @ khalifa Gafoor Qureshi ..Applicant
(Original accused No.5 as shown in FIR)

VERSUS

The State of Maharashtra,
Through Police Station Osmanabad (City),
Dist.Osmanabad. ..Respondent

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Advocate for Applicants : Mr.Sudarshan J. Salunke
APP for Respondent : Mr.A.M.Phule

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE: 22nd April, 2022

ORDER :-

1. Applicants have been arrested in connection with Crime

No.0030 of 2022 on different dates by Osmanabad City Police Station, District Osmanabad for the offence punishable under Sections 307, 353, 332, 333, 326, 325, 324, 143, 147, 148, 149 of the Indian Penal Code (IPC) and under Sections 5C and 9A of the Maharashtra Animal Preservation (Amendment) Act. They have filed present applications under Section 439 of the Code of Criminal Procedure.

2. Heard Mr.S.J.Salunke, learned Advocate for the applicants and Mr.A.M.Phule, learned APP for the respondent-State.

3. It has been vehemently submitted on behalf of the applicants that the applicants have no nexus with the offence. The applicants are labourers. Perusal of the First Information Report (for short "FIR") would show that it is alleged that some of the witnesses as well as the informant had received injuries but whether it amounts to offence under Section 307 or 326 of the IPC is required to be considered. The applicants are in jail for a considerable time. They have already undergone necessary custody period and they have co-operated the investigation. Many of the witnesses are Police persons and therefore, there is no question of tampering with the evidence of the prosecution. Co-accused Khurshid Pasha Shaikh, Jalil Qureshi, Hanumant

Laxman Humbe and Shahebaj Yunus Shaikh were released by the learned Additional Sessions Judge, Osmanabad on 7th March, 2022 and therefore, on the ground of parity the applicants be released on bail.

4. Learned APP for the respondent has strongly opposes the applications and submitted that the investigation is still incomplete and applicants have dared to attack the Police persons. The Police persons have received information that the slaughter house is in operation illegally at Khiranani Mala and therefore, the raid was conducted. There were about 12 to 14 animals cut at the spot. Four persons were present there. They escaped the place and by going at a distance, they started pelting stones. They were joined by some other persons and thereafter, after coming near to the Police party, they had picked up the knives kept for cutting the animals and started assaulting the Police party. One Dhanyakumar Patwa received injury to his right leg which is serious in nature, so also he has received injury to his right wrist, left wrist and head. Witness Satish Nagnath Sirsila also received injury to his head. Police Amaldar Samadhan Nawale received injury to his right eye. Baban Jadhavar received injury to his head. It is then stated that the Police persons also then picked up the pelted stones towards

them and they have also pelted stones towards the assailants as a result of which one person amongst them received injury. Four persons were arrested from the spot. They were Husain Papa Shaikh, Faisal Kausar Pathan, Sagar Kabir Gaikwad, Anand Jivan Pethe. The persons then jointed were Khalifa Qureshi and Kalim Qureshi. They all were then brought to the Police Station so also the meat was brought to the Police Station and then FIR has been lodged. The injury certificates show that Dhanyakumar Patwa had sustained grievous injury so also Samadhan Nawale and others received simple injuries.

5. Applicant No.1 - Husain Papa Shaikh in Bail Application No.424 of 2022 has criminal antecedents and he is involved in Crime No.2 of 2021, registered with Dhoki Police Station for the offence punishable under Sections 307, 323, 506 read with Section 34 of the IPC. Applicant No.5 - Kalim Gafur Qureshi in the same application is involved in Crime No.280 of 2021, registered with Osmanabad City Police Station for the offence punishable under Sections 307, 353, 332, 143, 147, 149, 294, 186, 336, 427 of the IPC. Applicant - Khalil @ Khalifa Gafoor Qureshi in Bail Application No.425 of 2022 has three criminal antecedents of which details have been given. Therefore, taking into consideration all these aspects, applicant Nos.1 and 5 in Bail

Application No.424 of 2022 do not deserve to be released on bail.

6. As aforesaid the contents of the FIR almost reproduced in earlier paragraph and therefore, they are not required to be reproduced again. As regards applicant No.1 - Husain Papa Shaikh and applicant No.5 - Kalim Gafur Qureshi are concerned, they are already involved in earlier Crime under Section 307 of the IPC etc. Therefore, while on bail, it is stated that they are involved in recent crime and therefore, after disinclination is shown, the learned Advocate for the applicants submits that, on instructions, he would withdraw the Bail Application No.424 of 2022 as against applicant No.1 - Husain Papa Shaikh and applicant No.5 - Kalim Gafur Qureshi.

7. As regards applicant No.2 - Faisal Kausar Pathan, applicant No.3 - Sagar Kabir Gaikwad and applicant No.4 - Anand Jivan Pethe in Bail Application No.424 of 2022 are concerned, it is to be noted that their names are appearing in the statements, however, they were amongst the first four persons, who fled from that place and went to a distance and then started pelting stones. Then it is stated that after two persons joined, they all took out knives and then started assaulting the Police persons, however, at that time specific act is not attributed and the

details about which applicant accused had assaulted whom and with which weapon have not been stated in the FIR. If we consider the statements of the witnesses then it can be seen that those persons have assigned role to certain accused persons and role has been attributed to applicant - Khalil @ Khalifa Gafoor Qureshi, who is applicant in Bail Application No.425 of 2022 and applicant No.5 - Kalim Gafur Qureshi in Bail Application No.424 of 2022 whose application has been withdrawn. Therefore, the author of the injuries to witness Dhanyakumar Patwa is Khalil @ Khalifa Gafoor Qureshi as per the statements of the witnesses, however, as regards applicant No.2 - Faisal Kausar Pathan, applicant No.3 - Sagar Kabir Gaikwad, applicant No.4 - Anand Jivan Pethe is concerned, no specific role has been attributed and it is stated that they were amongst those persons who have pelted the stones. Now, while dictating the order, it is also stated by the learned Advocate for the applicants, on instructions, that he is withdrawing Bail Application No.425 of 2022 in respect of applicant - Khalil @ Khalifa Gafoor Qureshi.

8. As aforesaid the injury certificates show that Dhanyakumar Patwa received grievous injury to his left thumb, right buttock and fracture to right Tibia proximal, the others have received simple injuries and Samadhan Nawale has received grievous

injury to right eye-ball.

9. In view of all these facts, the act attributed to applicant Nos.2, 3 and 4 in Bail Application No.424 of 2022 may not amount to offence under Sections 307, 326, 325 of the IPC. For other Sections their further custodial interrogation is not necessary and therefore, they deserve to be released on bail. Hence, the following order is passed :-

ORDER

- (i) Bail Application No.424 of 2022 is partly allowed.
- (ii) Bail Application No.425 of 2022 is disposed of as withdrawn.
- (iii) Bail Application No.424 of 2022 to the extent of applicant Nos.1 and 5 is disposed of as withdrawn.
- (iv) Applicant No.2 – Faisal Kausar Pathan, applicant No.3 – Sagar Kabir Gaikwad and applicant No.4 – Anand Jivan Pethe in Bail Application No.424 of 2022 be released on bail in connection with Crime No.0030 of 2022 registered with Osmanabad City Police Station, District Osmanabad, for the offence punishable under Sections 307, 353, 332, 323, 326, 325, 324, 143, 147, 148, 149 of the IPC and under Sections 5C and 9A of the Maharashtra Animal Preservation (Amendment) Act, on P.R.Bond Rs.30,000/- (Rs. Thirty thousand) each with two solvent sureties of Rs.15,000/- (Rs. Fifteen thousand) each.

(v) Applicant Nos.2, 3 and 4 in Bail Application No.424 of 2022 to attend the concerned Police Station on every Saturday between 10:00 a.m. to 02:00 p.m.

(vi) Applicant Nos. 2, 3 and 4 in Bail Application No.424 of 2022 shall comply with the requirements set out in Para No.12(1) to (6) of Chapter-I of Criminal Manual, whichever are applicable.

(vii) Applicant Nos. 2, 3 and 4 in Bail Application No.424 of 2022 shall not indulge in any criminal activity and shall not tamper with the prosecution evidence in any manner.

(viii) Bail before the trial Court.

(SMT. VIBHA KANKANWADI)
JUDGE

SPT