

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

CRIMINAL BAIL APPLICATION NO. 1386 OF 2022

Sayyad Wasim Sayyad Hasan ...Applicant
Versus
State Of Maharashtra ...Respondent

**WITH
CRIMINAL BAIL APPLICATION NO. 1534 OF 2022**

Mohd. Rizwan Mohd. Akbar @ Rizwan
Batterywala ...Applicant
Versus
State Of Maharashtra ...Respondent

**WITH
CRIMINAL BAIL APPLICATION NO. 1544 OF 2022**

Nasir Khan Kasam Khan ...Applicant
Versus
State Of Maharashtra ...Respondent

**WITH
CRIMINAL BAIL APPLICATION NO. 1876 OF 2022**

Wasim Akhtar Mohammad Salim ...Applicant
Versus
State Of Maharashtra ...Respondent

**WITH
CRIMINAL BAIL APPLICATION NO. 1868 OF 2022**

Mohammad Zahid Anees Ahmad @ Kachchi ...Applicant
Versus
State Of Maharashtra ...Respondent

**WITH
CRIMINAL BAIL APPLICATION NO. 2053 OF 2022**

Shaikh Shabbir Shaikh Mustafa ...Applicant
Versus
The State Of Maharashtra ...Respondent

....

Mr. Sanjeev Kadam i/b. Mr. M.N. Sandhyanshiv, for the Applicants in Bail Application Nos. 1386 of 2022,

Mr. Niranjan Mundargi, i/by Mr. Veerdhawal Deshmukh, Advocate for the applicant in Bail Application No.1534 of 2022 & 1544 of 2022

Mr. N.R. Bubna, for the Applicants in BA Nos.1868 of 2022, 1876 of 2022, 2053 of 2022.

Mrs. P. N. Dabholkar, APP for the Respondent – State.

....

CORAM : PRAKASH D. NAIK, J.
DATE : 7th OCTOBER, 2022.

PER COURT:

1. The applicants in all these applications are arrested in connection with C.R. No.75 of 2022, registered with City Police Station, Malegaon, Dist. Nashik (Rural) for offences punishable under Sections 307, 353, 332, 143, 144, 147, 148, 149, 427, 186, 120-B of Indian Penal Code and Section 37(1)(3) r/w Section 135 of Maharashtra Police Act.

2. The brief facts of prosecution case are as follows :

i. The complainant is Police Inspector attached to Malegaon City Police Station, Nashik. Vishwa Hindu Parishad had arranged rally at Tripura, wherein Anti-Muslim slogans were made and the shops and houses of members of the Muslim community were attacked. The rally had shown disregard

to the Muslim community leaders and their sacred book.

- ii. The Muslim organization in Malegaon along with two political parties had given a call for bandh at Malegaon on 12.11.2021 from 6.00 am. to 6.00 pm. The complainant and his associates were on bandobast duty on the said date. Several people gathered and upon incitement made by some co-accused, mob of around 2000 to 3000 people gathered and as the complainant and his associates tried to control the mob, they started pelting stones and causing destruction.
- iii. The complainant and his associates took to the public announcement system to pacify the crowd when the mob which had gathered started pelting stones when one of the stones struck the foot of the complainant. Similarly the stones also hit the foot of the associate of the complainant. Moreover, the mob also resorted to breaking of the shops and hotels by using pipe and rod which were lying on the road.
- iv. In order to control the crowd which had taken a violent turn, the complainant and his associates used chilly powder, gas etc when the mob started throwing fire balls towards the police party. The police then fired some round of arm in the air.

v. The CCTV footage from the shops and hotels as also the video footage captured on the mobile phone camera. The accused person came to be involved in the commission of the offence.

3. The applicant in Bail Application No.1386 of 2022 was arrested on 15.11.2021. The applicants in Bail Application No.1868 of 2022, 1876 of 2022 were arrested on 14.11.2021. The applicant in Bail Application No.2053 of 2022 was arrested on 15.11.2021. The applicant in Bail Application No.1534 of 2022 was arrested on 14.11.2021, and the applicant in Bail Application No.1544 of 2021 was arrested on 18.12.2021.

4. The common submission of the learned Advocates appearing for the applicants is that the applicants are in custody from the date of their arrest. Further custody is not required. Several persons were arrested in this case. Investigation is completed and charge-sheet is filed. No specific role has been attributed to the applicants. Some of them were impleaded in subsequent statements recorded belatedly. There is no strong evidence to establish their presence at the scene of offence. There is no evidence to substantiate charge under Section 307 of IPC. Mr. Kadam learned Advocate appearing for the applicant in Bail Application No.1386 of 2022, submitted

that the applicant is not named in the FIR. There are no criminal antecedents against him. Section 307 has been invoked on account of injuries suffered by the policemen to their leg. It is not attracted. Learned Advocate Mr. Bubna for the applicant in Bail Application No.1868 of 2022 submitted that the applicant is named in the FIR, however no role is prescribed to him. He had allegedly used iron rod which has been recovered but there is no corresponding injury with the use of iron rod. The injury is suffered on leg hence Section 307 could not be attracted. The applicant in Bail Application No.1876 of 2022 is not named in the FIR. His name is shown in supplementary statement dated 20.01.2022. Iron rod has been recovered from him. The applicant in Bail Application No.2053 of 2022 is not named in the FIR. His name is reflected in the supplementary statement. There are no criminal antecedents against him. Mr. Mundargi appearing for the applicant in Bail Application No.1534 of 2022 and 1544 of 2022 submitted that the applicants are not named in the FIR. He was allegedly seen in CCTV footage along with the crowd of 1500 to 2000 persons. The prosecution relying on the statement of one Yogesh Thakur, where it is alleged that the persons were inciting mob and the applicant is allegedly one of such person. Section 307 of IPC is not attracted in this case. It is submitted that the applicant in Bail Application

No.1544 of 2022 is in custody from 18.12.2021 and he is not named in the FIR. There is no recovery of any weapon from him.

5. The prosecution has opposed these applications by filing affidavit-in-reply. Learned APP submitted that, role of all the applicants has been specified in the affidavit. The evidence on record indicate that the accused had gathered together by forming unlawful assembly. They pelted stones, held sticks and assaulted policemen. The evidence on record indicates active participation of the applicants. The offence is of serious nature. The CCTV footage obtained pertaining to the scene of offence establishes the presence of the applicants. Several police officials were injured. The mob had moved other places also and therefore CR No.74 of 2021 and C.R. No.75 of 2021 were registered with City Police Station, Malegaon. In the affidavit-in-reply filed in all the applications, it is stated that the applicants herein have played specific role in the crime. Malegaon is place for communal riots, where maintaining law and order is difficult. The offence of rioting is grave and involved huge mob provoked by the organization referred to in the affidavit in reply. The offence is against the society at large and has far reaching consequences. The mob has also attacked the policeman. Prima facie case is made out. Sections 146, 147, 149

of IPC are very clear which make mere joining the unlawful assembly with deadly weapons. It is also rioting armed with deadly weapons and unlawful assembly guilty. There are statements of eye witnesses, CCTV footage and injury certificates.

6. It is pertinent to note that the applicants are in custody for a period of more than 11 months. No criminal antecedents are reported against applicants. Investigation is completed and the charge-sheet is filed. There is no corresponding injury in respect to the alleged iron rod used by the accused. Section 307 has been invoked in this case. However, it appears that one of the policeman had suffered injury to his knee. Considering the aforesaid circumstances, further detention of the applicants is not necessary. Hence, I pass the following order:

ORDER

- i. Criminal Bail Application Nos. 1386 of 2022, 1868 of 2022, 1876 of 2022, 2053 of 2022, 1534 of 2022, 1544 of 2022 are allowed;
- ii. The applicants are directed to be released on bail in connection with C.R. No.75 of 2021 registered with City Police Station, Malegaon, Dist. Nashik (Rural) on executing P.R. Bond in the sum of Rs.20,000/- each with one or more sureties in the like amount;

- iii. The applicants are permitted to furnish cash bail in the sum of Rs. 20,000/- each for a period of eight weeks in lieu of surety;
- iv. The applicants shall report concerned Police Station once in a month on first Saturday of month between 11.00 a.m. to 1.00 p.m. till framing of charge;
- v. The applicants shall not tamper with the evidence and shall not indulge in similar activities in future;
- vi. All Bail Applications are disposed off accordingly.

(PRAKASH D. NAIK, J.)