

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.1296 OF 2022**

Ibrahim Shaikh Raees Modwala and Ors. ... Applicants
versus
The State of Maharashtra ... Respondent

**WITH
ANTICIPATORY BAIL APPLICATION NO.1297 OF 2022**

Shaikh Akaram Shaikh Arif @ Ajju
Lasanwala and Ors. ... Applicants
versus
The State of Maharashtra ... Respondent

Mr. M.N.Sandhyanshiv with Mr. Prashant P. Raut, for Applicants.
Mr. S.V.Gavand, APP, for State.
Mr. Shailesh B. Patil, PSI, Malegaon City Police Station, present.

CORAM: N.J.JAMADAR, J.

**DATE : 11th MAY, 2022
(VACATION COURT)**

P.C.

1. These Applications are preferred by the Applicants seeking pre-arrest bail in connection with C.R.Nos.74 of 2021 and 75 of 2021 registered with Malegaon City Police Station. C.R.No.75 of 2021 is registered for the offences punishable under Sections 120B, 307, 353, 332, 143, 144, 147, 186 of Indian Penal Code, 1860 ('the Penal Code'), Sections 3 and 4 of Police (Incitement to Disaffection) Act, 1922, Section 37(1)(3) read with Section 135 of the Maharashtra Police Act, 1951, Section 3(2) of Prevention of Damage

to Public Property Act, 1984 and Sections 83(2) and 87 of the Juvenile Justice (Care & Protection of Children) Act, 2015. In C.R.No.74 of 2021, in addition to the aforesaid offences, the Applicants are also arraigned for the offence punishable under Section 395 of the Penal Code.

2. The indictment against the Applicants is that on 12th November, 2021, since morning, people started to assemble at Hussain Seth Compound, Malegaon, to protest against the alleged atrocities on the members of the Applicants' community in the State of Tripura and disrespect to the Prophet. The co-accused Mohd. Yusuf Mohd. Ilyas and his associates and the members of the Raza Academy allegedly instigated the huge mob of about 2000 persons to march to Shahid Tower. Eventually, at Dudh Bazar, Old Agra Road, the mob of around 1500 persons became violent and pelted stones on the government vehicles, damaged public and private properties and assaulted the police officers/officials, resulting in grievous injuries to many police officers/officials. Mr. Pintya J. Pavara, Police Constable and Mr. Sureshkumar T. Ghusar, Police Inspector, Malegaon City Police Station, thus, lodged reports with the Malegaon City Police Station leading to registration of C.R.Nos.74 and 75 of 2021 for the aforesaid offences.

3. Apprehending arrest, the Applicants preferred Applications for pre-arrest bail before the Sessions Judge. By orders dated 29th April, 2022 the learned Additional Sessions Judge was persuaded to reject the Applications.

4. Heard Mr. Sandhyanshiv, learned Counsel for the Applicants and the learned APP appearing for the State at some length. The learned Counsel for the Applicants would urge that this Court has granted ad-interim relief to the co-accused and the Applicants herein, though specifically named in the FIRs, also deserve the same dispensation. It was submitted that general allegations are made against the Applicants. Laying emphasis on the fact that out of the alleged mob of 1000 to 15000 persons, around 25 persons have been named in the FIRs, including the Applicants, it was submitted that the identity of the Applicants as the persons who allegedly committed rioting in prosecution of the common object of the unlawful assembly, cannot be said to have been prima facie established. As it was the case of mammoth rioting, the Applicants deserve interim protection, submitted Mr. Sandhyanshiv.

5. Per contra, the learned APP invited the attention of this Court to the allegations in the FIRs as well as the statements of the

witnesses, which specifically incriminate the Applicants as the persons who indulged in the acts of violence and even assaulted the persons who were trying to reason with the Applicants. According to the learned APP, in the light of the nature of the accusation against the Applicants, they cannot be permitted to draw mileage from the fact that the co-accused have been granted interim protection.

6. I find substance in the submissions of the learned APP. The Applicants have been specifically named as the members of the unlawful assembly. Overt acts have been attributed to the Applicants. Moreover, in the statements of the witnesses recorded under Section 161 of the Code of Criminal Procedure, 1973, the Applicants have been named as the persons who indulged in the acts of violence. The witnesses have further stated that when one Anwar Khan tried to reason with the Applicants, the former was assaulted, branding him as a police sympathizer, and even the Applicants exhorted others to kill the said Anwar Khan.

7. At this stage, the fact that few of the police officers/officials sustained grievous injuries and valuable public/private properties were damaged, cannot be totally lost sight of. Specific role has been attributed to the Applicants. The material on record thus, prima facie, shows the complicity of the Applicants.

Custodial interrogation of the Applicants appears necessary for effective investigation.

8. I am, therefore, not persuaded to exercise the discretion in favour of the Applicants.

9. Hence, the order.

ORDER

(i) The Applications stand rejected

(N.J.JAMADAR, J.)