

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

CRIMINAL BAIL APPLICATION NO. 1795 OF 2022

1. Rizwan Khan Mohammad Khan
2. Shaikh Nasir Shaikh Mehboob
3. Altaf Anwar Shaha ...Applicants

Versus

State Of Maharashtra ...Respondent

**WITH
CRIMINAL BAIL APPLICATION NO. 2042 OF 2022**

1. Mohammad Ismail Mohammd Israil
2. Mohammad Rafizue Mohammad Yunus
3. Javeed Khan Ataullah Khan ...Applicants

Versus

State Of Maharashtra ...Respondent

**WITH
CRIMINAL BAIL APPLICATION NO. 2052 OF 2022**

Shaikh Sabir Shaikh Mustafa ...Applicant

Versus

The State Of Maharashtra ...Respondent

**WITH
CRIMINAL BAIL APPLICATION NO. 2055 OF 2022**

Mohammad Zahid Anees Ahmed @ Kachchi ...Applicant

Versus

The State Of Maharashtra ...Respondent

**WITH
CRIMINAL BAIL APPLICATION NO. 2056 OF 2022**

Waseem Akhtar Mohammad Saleem ...Applicant

Versus

The State Of Maharashtra ...Respondent

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Mr. Sanjeev Kadam i/b. Mr. M.N. Sandhyanshiv, for the Applicants in Bail Application Nos. 1795 of 2022, 2042 of 2022.

Mr. N.R. Bubna, for the Applicants in BA Nos.2052 of 2022, 2055 of 2022, 2056 of 2022.

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

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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.74 of 2022, registered with City Police Station, Malegaon, Dist. Nashik for offences punishable under Sections 307, 353, 332, 143, 144, 147, 148, 149, 427, 186, 120-B of IPC and Section 37(1)(3) of Bombay Police Act.

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

On account of the incidents occurred in Tripura Bandh was called out by various groups/organisations. It is alleged that while the mob had gathered, information received by the police that some mob had assembled at Bombay Agra Road and proceeding towards Mosam River and are involved in stone pelting and therefore the police staff went towards the said place. It is alleged that a mob of 1000 to 1500 was

gathered. S.D.P.O. was trying to convince the mob to remain peaceful and to go back. However, the mob did not listen. Request of the police were turned down. They started pelting stones towards the police staff and resultantly some police officers were injured. The police used force to disburse the said mob. On the basis of the CCTV footage and taking the help of the footages of Whats app relating to the speeches delivered by some of the political and religious leaders, FIR was registered.

3. The applicant in Bail Application No.2052 of 2022 was arrested on 08.12.2021. The applicant in Bail Application No.1795 of 2022, was arrested on 17.11.2021. The applicant in Bail Application No.2055 of 2022 was arrested on 20.11.2021. The applicant in Bail Application No.2056 of 2022 was arrested on 08.12.2021, and the applicant in Bail Application No.2042 of 2022 was arrested on 08.12.2021.

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. 1795 of 2022 & 2042 of 2022, submitted that the applicants are not named in the FIR. There are no criminal antecedents against applicants. Section 307 has been invoked on account of injuries suffered by the policemen. However, Section 307 is not attracted. Learned Advocate Mr. Bubna submitted that no specific role is prescribed to applicants represented by 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. 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 about 11 months. No criminal antecedents are reported against applicants. Investigation is completed and the charge-sheet is filed. Section 307 has been invoked in this case. It is debatable whether Section 307 of IPC can be invoked in this case. Considering the aforesaid circumstances, further detention of the applicants is not necessary. Hence, I pass the following order:

ORDER

- i. Criminal Bail Application Nos. 1795 of 2022, 2042 of 2022, 2052 of 2022, 2055 of 2022, 2056 of 2022 are allowed;
- ii. The applicants are directed to be released on bail in connection with C.R. No.74 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.)