

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

CRIMINAL BAIL APPLICATION NO. 1332 OF 2022

Sherkhan Hayatkhan ...Applicant
Versus
State Of Maharashtra ...Respondent

**WITH
CRIMINAL BAIL APPLICATION NO. 1333 OF 2022**

Mohammad Sabir Mohammad Sadki
@ Sabir Gauhar ...Applicant
Versus
State Of Maharashtra ...Respondent

**WITH
CRIMINAL BAIL APPLICATION NO. 1334 OF 2022**

1. Tauseef Khan Noor Khan
2. Aftab Ejaz Baig
3. Arbaz Shaikh Sardar
4. Shaikh Gaysuddin Shikh Safiuddin
5. Ateeque Ahmed Jamal Ahmed
6. Shaikh Amir Shaikh Jameel ...Applicants
Versus
State Of Maharashtra ...Respondent

**WITH
CRIMINAL BAIL APPLICATION NO. 1543 OF 2022**

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

**WITH
CRIMINAL BAIL APPLICATION NO. 1570 OF 2022**

Arif Akhtar Abdul Ahad ...Applicant
Versus
State Of Maharashtra ...Respondent

**WITH
CRIMINAL BAIL APPLICATION NO. 1569 OF 2022**

Shakeel @ Shakil Mohammad Ismail	...Applicant
Versus	
The State Of Maharashtra	...Respondent

**WITH
CRIMINAL BAIL APPLICATION NO. 1791 OF 2022**

Raees Ahmad Abdul Samad	...Applicant
Versus	
The State Of Maharashtra	...Respondent

**WITH
CRIMINAL BAIL APPLICATION NO. 1877 OF 2022**

Sarfaraaz Shaikh Javid	...Applicant
Versus	
The State Of Maharashtra	...Respondent

**WITH
CRIMINAL BAIL APPLICATION NO. 1895 OF 2022**

Shaikh Imran Shaikh Saleem	...Applicant
Versus	
The State Of Maharashtra	...Respondent

**WITH
CRIMINAL BAIL APPLICATION NO. 1818 OF 2022**

Ateeque Ahmad Saeed Ahmad	...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. 1332 of 2022, 1333 of 2022, 1334 of 2022, 1569 of 2022, 1877 of 2022, 1570 of 2022, 1791 of 2022.

Mr. Niranjan Mundargi, i/by Mr. Veerdhawal Deshmukh, Advocate for

the applicant in Bail Application No.1543 of 2022.

Mr. Vishal Ingawale a/w Ms. Snehal Kolamkar a/w Ms. Tejashree Kolamkar a/w Mr. Abhilash Kurey a/w Mr. Vishal Padvi, Advocate for the applicant in Bail Application No.1818 of 2022.

Mr. N.R. Bubna, for the Applicants in BA Nos.1877 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. Heard both sides.
2. The applicants in all these applications were arrested in connection with C.R. No.76 of 2021 registered with Ayesha Nagar Police Station, Malegaon, Dist. Nashik for offences under Sections 395, 353, 332, 143, 147, 145, 146, 149, 427 of Indian Penal Code (for short “IPC”) r/w Section 3 of the Prevention of Damage to Public Property Act, 1984 and Section 37(1)(3) punishable under Section 135 of the Maharashtra Police Act.
3. The case of the prosecution is that, on account of some defamatory statement against Muslim Moulavi at State of Tripura, agitation was organized in Malegaon. Mob of people had gathered together. They had allegedly decided to conduct rallies with provocative speeches and caused the Malegaon City to shut down. Section 144 was invoked. Policemen were deployed on duty. Some

of the accused pelted stones caused damage to the property. FIR was registered against several persons. Several accused were arrested. On completing investigation charge-sheet was filed against them.

4. The applicant in Bail Application No.1332 of 2022 was arrested on 29.01.2022. The applicants in Bail Application No.1333 of 2022 & 1877 of 2022 were arrested on 13.11.2021. The applicant Nos. 1 to 5 in Bail Application No.1334 of 2022 were arrested on 17.12.2021 and the applicant No.6 therein was arrested on 20.12.2021. The applicant in Bail Application No.1569 of 2022 was arrested on 17.11.2021. The applicant in Bail Application No.1570 of 2022 was arrested on 18.11.2021. The applicant in Bail Application No.1895 of 2022 was arrested on 14.11.2019. The applicant in Bail Application No.1818 of 2022 was arrested on 15.11.2021. The applicant in Bail Application No.1791 of 2022 was arrested on 18.12.2021. The applicant in Bail Application No.1543 of 2022 was arrested on 18.12.2021.

5. The learned Advocates appearing for the applicants submitted that the applicants are in custody from the date of their arrest. Investigation is completed, charge-sheet is filed. There are no criminal antecedents against the applicants. Most of the applicants are not named in the FIR and they were implicated in

the supplementary statement which was recorded belatedly on 30.01.2022. There was no test identification parade.

6. Learned counsel for the applicant appearing in Bail Application No.1332 of 2022 submitted that the applicant was not armed with any weapon. The role of applicants in Bail Application Nos.1332 of 2022, 1333 of 2022, 1334 of 2022 and 1569 of 2022 is identical. They were not named in the FIR and for the first time they were shown involved in the supplementary statement. The applicant in Bail Application No.1569 of 2022 was also impleaded in C.R. No.74 of 2021 and C.R. No.75 of 2021 registered with City Police Station, Malegaon. He was granted bail in C.R. No.74 of 2022 and 75 of 2021 registered with City Police Station, Malegaon. The applicant in Bail Application No.1570 of 2022 has allegedly played identical role. The applicant in Bail Application No.1877 of 2022 and 1895 of 2022 were also named in the supplementary statement. In respect to all the applicants referred to herein above there are no criminal antecedents against them. The say by police or the orders passed by the lower Court does not refer to any criminal antecedents. No specific overt act has been attributed to them. The applicant in Bail Application No.1818 of 2022 has also allegedly played similar role having no antecedents. The applicant in Bail Application No.1791 of 2022 was named in the FIR but no

specific role is attributed to him. The applicant in Bail Application No.1818 of 2022 is also named in the FIR however, no specific role has been attributed to him. Thus, the submissions of the all the learned counsels appearing for the applicants arrested in C.R. No.76 of 2021 is that they were implicated on the basis of CCTV footage. However, it is not stated that as to who has identified these applicants from the CCTV footage. It is alleged that the secret informant has identified the accused in the CCTV footage. The applicants are in custody for substantial period of time. Further detention of the applicants is not necessary. The accused had gathered together only to protest and not to create any violence.

7. 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 executing 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. Learned APP further submitted that, 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.

8. It is pertinent to note that the applicants are in custody from the date of arrest. Thus, they are in custody at least for a period of more than 11 months. No criminal antecedents are reported against applicants. Investigation is completed and the charge-sheet is filed. C.R. No.76 of 2022 refers to some injuries sustained by the witness in the nature of simple injuries due to hard and blunt object. Considering these circumstances, further detention of the applicants is not necessary.

ORDER

- i. Criminal Bail Application Nos. 1332 of 2022, 1333 of 2022, 1334 of 2022, 1569 of 2022, 1570 of 2022, 1877 of 2022, 1895 of 2022, 1818 of 2022, 1791 of 2022, 1543 of 2022 are allowed;
- ii. The applicants are directed to be released on bail in connection with C.R. No.76 of 2021 registered with Ayesha Nagar Police Station, Malegaon 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.

(PRAKASH D. NAIK, J.)