

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

961 BAIL APPLICATION NO.1628 OF 2023

**EKNATH SATWAJI KUMBHARKAR
VERSUS
THE STATE OF MAHARASHTRA**

...

with

WITH BAIL APPLICATION NO. 1437/2023

**SHAIKH AABED SHAIKH PYAREMIYAN
VERSUS
THE STATE OF MAHARASHTRA**

WITH

WITH BAIL APPLICATION NO.1657/2023

**SYED TOHID SYED SAMANDAR
VERSUS
THE STATE OF MAHARASHTRA.**

...

Advocate for Applicant : Mr. Nilesh S. Ghanekar
APP for Respondents: Mr. K.S. Patil/ S.B. Narwade.

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 21st SEPTEMBER, 2023

ORDER :-

By these applications, the applicants seek bail in connection with Crime No. 85 of 2023 registered with Tadkalas Police Station, District Parbhani for the offences punishable under Sections 302, 307, 324, 341, 295(a), 143, 147, 148, 149, 109 of IPC and under Section 135 of the Maharashtra Police Act.

2. The investigation was set in motion on the basis of information given by one Gorasingh @ Sachin Singh s/o. Gurubacchansingh Dudhani. It is alleged that on 27.5.2023, unknown persons arrived on the spot and threw chilli powder on their person and thereafter attacked them. It is alleged that their companion Kirpalsingh Bhond received multiple injuries. He was severely beaten by accused persons using iron rod and fists and kicks. Supplementary statements of the informant is recorded, wherein, specific roles against some of the assailants are described. The applicants were arrested in pursuance of the aforesaid information and registration of the offences. The investigation was progressed. After completion of investigation, charge sheet is filed. The applicants had moved for grant of bail before the Sessions Court, however, their plea is rejected. Hence, the present application.

3. Mr. Ghanekar, learned counsel for the applicant would submit that the FIR was lodged against unknown culprits. However, names of the accused persons are introduced subsequently, based on the hear-say information. The statements of the so called eye witnesses name the applicants, however, omnibus allegations are incorporated stating that all accused have assaulted the deceased by kicks and fists. Mr. Ghanekar would submit that this court has already released one of the accused i.e. Pasha @ Baba Khan Afzal Khan after considering the material in the charge sheet. The role attributed to the applicants is similar to said Pasha. Therefore, on the ground of parity also, the applicants are entitled to be released on bail.

4. Learned APP opposes the prayer for grant of bail on the

ground that a person has lost his life on account of brutal attack. The applicants are named by the eye witnesses. Section 149 of the IPC is invoked. As such, the applicants are not entitled of grant of bail.

5. Having considered the submissions advanced, apparently, the FIR do not name the applicants. The statements of the eye witnesses name the applicants as assailants. However, the allegations are omnibus. Alongwith other accused persons, the applicants are also generally alleged to have assaulted the deceased. Pertinently, there is no discovery at the instance of the applicants. The weapons are recovered at the instance of some other accused person. The applicants were subjected to identification parade, however, they are not identified by witnesses as assailants. Considering the nature of allegations against the applicant and the fact that they are not identified in the T.I. Parade, so also, there is no recovery of incriminating material from them, it would be difficult to presume guilt against applicants for the offence alleged. This court has already released accused Pasha on bail. The role attributed to the applicants is similar to that of accused Pahsa @ Baba Khan Afzal Khan. In that view of the matter, a case is made out for grant of bail. Hence, the order :-

O R D E R

(I) Bail application is allowed.

(ii) The applicants (1) Eknath Satwaji Kumbharkar (2) Shaikh Aabed Shaikh Pyaremiyan and (3) Syed Tohid Syed Samandar be released on bail in Crime No. 85 of 2023 registered with Tadkalas Police Station, District Parbhani for the offences punishable under Sections 302, 307, 324, 341, 295(a), 143, 147, 148, 149, 109 of IPC and under Section 135

of the Maharashtra Police Act, on executing P.B. and S.B. of Rs. 50,000/- (rupees fifty thousand) each on the following conditions :-

[a] The applicants shall not tamper with the prosecution evidence in any manner;

[b] They shall attend the proceedings before the Sessions Court on each and every effective date.

[c] They shall not establish contact with the witnesses named in the charge sheet and shall not tamper with the prosecution evidence.

[iii] The applications stand disposed of.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-