

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

CRIMINAL APPEAL NO. 1040 OF 2023

Issac Kutubuddin Shaikh

...Appellant

vs.

The State of Maharashtra and Anr.

...Respondents

Ms. Vaishali S. Kene - Advocate for the Appellant

Mr. S. R. Agarkar - APP for the Respondent-State

Mr. Proper D'souza a/w Mr. Vishal D. Khetre - Advocate for
Respondent No. 2.

PSI R. H. Gadwe - Hill Line Police Station

CORAM : S. M. MODAK, J.

DATE : 08th DECEMBER, 2023

P. C. :-

1. Heard learned Advocate for the Appellant and learned
APP and learned Advocate for Respondent No. 2.

2. There are two FIRs registered at Hill Line Police Station.
One bearing CR No. I-102 of 2023, dated 13/03/2023 for the
offence punishable under Sections 324, 354, 509, 323, 504,
506, 143, 147, 148, 149 of the Indian Penal Code read with
Section 3(1)(r), 3(1)(u), 3(1) (w) (i), 3(1) (w)(ii), 3 (2) (5) of the
Schedule Caste and Scheduled Tribes (Prevention of
Atrocities) Act 1989 in which the Appellant is seeking the
regular bail. Whereas at his instance there is F.I.R. registered

earlier in time on 08/03/2023 at C.R. No. 98 of 2023 under Section 324, 323, 504 read with 34 of the Indian Penal Code against in all three persons.

3. The contention is that there is physical assault by members of two groups and incident does not take place in the manner as suggested by the first informant- Sindhu Kharat.

4. Further contention is that even incident took place on 07/03/2023, it was registered on 13/03/2023. Whereas the F.I.R. filed by the Appellant was registered immediately. Both these incidents took place on cricket ground. The first informant- Sindhu Kharat alleged that her mother's nephew Sachin Shingare and Satish Shingare were playing cricket at about 7 pm alongwith others. At that time present Appellant alongwith two colleagues came there in drunken condition. They have stopped Satish and Sachin from playing cricket.

5. Learned Advocate Shri D'souza tried to explain how the situation has worsened and this Appellant called his colleagues and thereafter, members of the family of the first informant was beaten with the help of weapons like stick, iron rods.

6. It is true that Appellant is behind bar since 14/03/2023 and charge-sheet is filed. His version about incident is otherwise. In fact they were playing cricket and the

prosecution witnesses Satish and Sachin came there in the drunken state and assaulted him with the help of cricket bat. Others have also participated.

7. The Court of the Additional Sessions Judge rejected the regular bail application for the reason that investigation is yet pending. According to him, the allegations are serious and suggest the possibility of communal riot cannot be ruled out. Now investigation is completed. The Appellant can put to terms. Hence following order is passed:-

ORDER

- (i) Appeal is allowed.
- (ii) Order dated 31/05/2023 passed by the Court of Additional Sessions Judge, Kalyan is set aside.
- (iii) The Appellant is released on bail on furnishing the Personal bond and Security bond in sum of Rs. 25,000/- in connection with C.R. No. I-102 of 2023, registered with Hill Line Police Station, Ulhasnagar.
- (iv) The Appellant is directed not to stay within the Ulhas Nagar Revenue Taluka for the period of one year.
- (v) Appellant is directed not to threaten the prosecution witnesses.

[S. M. MODAK, J.]