



(State of Maharashtra Vs. Jakir Mohamadali Tamboli and 19 others)
(C.N.R. No. MHAH01-003696-2023)

Common order below Exhs.03 & 29 in Sessions Case

No.225/2023

(Passed on 24.08.2023)

These applications under Section 439 of the Code of Criminal Procedure by the Applicants/Accused No. 4.Adnan Ejaj Shaikh and No. 2.Nasir Ahmed Shaikh seeking their release on bail in present Sessions Case No.225/2023 (Crime No. I-241/2023 for the offence under Section 307, 323, 143, 147, 148, 149 of Indian Penal Code with Sections 4/25 of Arms Act, registered at Tophkhana Police Station, Ahmednagar). The FIR is registered on 28.02.2023 at the instance of informant Kunal Sunil Bhandari. The Applicants/Accused No.1 Adnan was arrested on 05.03.2023 and No.2 Nasir was arrested on 28.02.2023. On request of Investigating Officer, they were remanded to Magisterial Custody and since then, they are in jail.

2. The prosecution story is as under :-

The informant who is the injured, while taking treatment in Mac-Care Hospital, Ahmednagar, lodged the complaint about assault caused to him by the Applicants/Accused and other accused, of whom some were arrested and some are still absconding.

3. That on 27.02.2023, the informant along with his friend Bunty Dhapse were going towards Ramwadi from Tarakpur Bus Stand road on his two-wheeler. As they came near petrol pump, they saw mob of people and they stopped. The Applicant/Accused No.2 Nasir came towards towards them while talking on his mobile phone

along with 25-30 people along with him and said this is the person offering sacred cloth “चादर चढाणेवाला”.

4. He then threatened Bunty Dhapse to go away. He gave his mobile phone to informant and asked him to talk with Afzal Bhai. The informant denied. Then Applicant/Accused No.2 Nasir gave a call to other persons that Shaheban Jahagirdar has asked to kill the informant and thus Applicant/Accused No.2 Nasir and other persons accompanying him assaulted him with deadly and dangerous weapons. Due to the assault, the informant has sustained grievous injuries. He was then taken to hospital by Akshay Kenjarla and his friend.

5. It is contended by both the Applicants/Accused that they are implicated in false and fabricated case. As the trial will take its own time for disposal, the Applicant/Accused cannot be kept in jail and hence deserves to be released on bail. Though there initial bail applications were rejected, they were prior to completion of investigation. As of now, the charge-sheet has been filed on completion of investigation, there is no issue of tampering the evidence or pressurizing the witnesses. There is no recovery of any incriminating material from them.

6. It is contended that, a minor dispute of neighbours over the children was given criminal colour by some anti-social elements to trigger the communal disharmony. It is stated that, there is no such injury to informant to make an offence under Section 307 of Indian Penal Code. Some of the co-Accused No.1, 5 & 6 have been

released on the bail by Hon'ble High Court and hence these Applicants/Accused pray release on bail on ground of parity.

7. The APP has filed Say at Exh.06 for application Exh.03 and request to read the same as reply for Exh.29. The APP reiterating the story of FIR strongly opposing the relief sought by the Applicants/Accused on the ground that they along with other Accused persons have committed serious body offence. It is stated that the assault to the informant has taken the form of communal dispute as the informant and the all the Accused persons belong to different religion.

8. If the Applicants/Accused are granted benefit of bail, they will not have any fear for law and they may commit similar or other kind of offences. As the charge-sheet has been filed, the prosecution is ready with trial and undertake to take the trial expeditiously. There is every possibility of pressurizing informant and witnesses, thereby tampering the evidence and hence the applications be rejected.

9. Following points arise for determination and I record the findings against each of them for the reasons given below.

<u>No.</u>	<u>Points</u>	<u>Findings</u>
1	Whether the Applicants/Accused No.4 & 2 are entitled to be released on bail ?	In the Negative.
2	What order ?	As per final order.

REASONS

As To Point No.1 :-

10. Heard the Advocate for the Applicants/Accused and the APP. Perused the charge-sheet and the documents on behalf of Applicant/Accused. It is contended on behalf of the Applicant/Accused that, bail is rule and jail is exception, hence Applicant/Accused cannot be kept lingering in jail. He relies upon Lt. Col. Prasad Shrikant Purohit Vs. State of Maharashtra 2017(3)ABR(Cri) 365, Sanjay Chandra Vs. Central Bureau of Investigation AIR 2012 SC 830, State of Kerala Vs. Raneef 2011 CRI. L. J. 982, Akshay Ankush Jathar Vs. State of Maharashtra AIROnline 2019 Bom 2418, Yogesh Shivaji Pardeshi Vs. State of Maharashtra AIROnline 2022 BOM 6406, Laxman Irappa Hatti Vs. State of Maharashtra 2004 CRI. L. J. 3802 and Bharat Rambhau Gaikwad Vs. State of Maharashtra AIROnline 2021 Bom 2933.

11. Relying upon these cases, it is contended on behalf of the Applicants/Accused that, they are entitled for filing of successive bail application on completion of charge-sheet, if there is substantive change as a ground. It is to be hereby stated that, the successive bail application filed by the Applicants/Accused is entertained.

12. On perusal of F.I.R. it is seen that, the Applicant/Accused No.2 is instrumental causing the assault. It is stated that, the Applicant/Accused No.2 got the information that, the informant had been to the spot to assault the Accused. Though the informant is not injured seriously, to save himself, he has lodge false case against the

Applicant/Accused No.2. At this stage, though the investigation is completed and charge-sheet has been filed, the contents of the F.I.R. shows that, the incident erupted on the say of Applicant/Accused No.2, as he gave the call to all other Accused to assault the informant. It is alleged by the informant that, the present Accused No.2 has assaulted him with the help of chopper.

13. It is contended by the Applicants/Accused that, the informant is out of the Hospital and thus his life is not in danger at present. He has not sustain any serious injury to any vital part of his body. Hence, offence under Section 307 cannot be attributed him. In the F.I.R., the Complainant has specified about chopper injury by the present Applicant/Accused No.2. He instigated all other Accused to assault the informant thereby causing communal disharmony. Looking into the nature of the offence and the conduct by which it was being operated, I do not find any good ground to release both the Applicants/Accused on bail and hence I proceed to pass following order.

ORDER

1. The Applications Exh.03 & 29 are stands rejected.
2. Matter to proceed further.

Date : 24.08.2023

(Smt. S. V. Sahare)
Additional Sessions Judge,
Court No.5, Ahmednagar.