

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAILAPPLICATION NO. 2337 OF 2014

Dhananjay @ Manoj Jairam Desai ... Applicant
vs.
The State of Maharashtra ... Respondent

WITH
CRIMINAL APPLICATION NO. 778 OF 2014
IN
CRIMINAL BAIL APPLICATION NO. 2337 OF 2014

Mr. Mubeen Mohammad Sadique Shaikh Applicant/Intervener/
Orig. complainant

In the matter of:
Mr. Dhananjay alias Manoj Desai Applicant
vs.
State of Maharashtra Respondent

WITH
CRIMINAL APPLICATION NO. 779 OF 2014
IN
CRIMINAL BAIL APPLICATION NO. 2337 OF 2014

Mr. Dhananjay alias Manoj Desai Applicant
vs.
State of Maharashtra Respondent

And
Mr. Azhar Tamboli Applicant/Intervener.
Mr. A.P.Mundargi, Senior Advocate, a/w Ms. Swapna Kode for the applicant.
Mr. Arfan Sait, APP, for the State.
Mr. Mateen Shaikh for Intervener (APPP No.778/2014)
Mr. Hassnain Kazi Sayyed for Intervener (APP No.779/2014)

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 5th March, 2015.

P.C.

Heard respective counsel and the learned APP.

2. This is an application under Section 439 of the Code of Criminal procedure, 1973. The applicant herein is arrested on 10.6.2014 in Crime No. 305 of 2014 registered at Hadapsar Police Station for the offence punishable under Sections 302, 307, 143, 147, 148, 149 read with Section 120-B of Indian Penal Code. The investigation is completed and charge sheet is filed.

3. It is the case of the prosecution that on 2.6.2014, one Shaikh Mohsin Mohammed Sadik lodged a report at the police station alleging therein that his elder brother Mohsin Shaikh and his friend Riyaz Ahmed were residing together. That Mohsin Shaikh was working as an I.T. Manager in Ujwala Enterprises. On 2.6.2014, Mohsin Shaikh and his friend Riyaz Ahmed had been to Unnatinagar to offer Namaz at the Masjid. The informant followed them on motorcycle. At about 9 p.m., the informant had returned to his building. At about 9.15 p.m., Riyaz Ahmed called him on his cellphone number and informed him that after offering prayers, they had been to fetch their tiffin on the motorcycle. That Mohsin was driving the motorcycle. Some 20 boys came on 7 – 8 motorcycles

and followed them. They were armed with hockey sticks and stones. They mounted assault upon both of them. Mohsin was wearing a green coloured "Pathani" dress and had a beard due to which he was identified as a Mohammedian and hence the said miscreants mounted assault upon him. They had also followed Riyaz . However, Riyaz rescued himself. The informant rushed to the spot and noticed that his brother had fallen in an injured condition. The informant was asking for help. Some passerby called upon the police by dialing 100 number. At that time, the same miscreants were following another Mohammedian. Upon seeing the arrival of the police, all the miscreants had abandoned their motorcycles on the spot and had fled away. Mohsin was taken to the hospital. Upon arrival, the doctor had declared him dead. The cause of death was head injury. On the basis of the report, Crime No.305 of 2014 was registered against unknown persons and investigation was set in motion.

4. In the course of investigation, on 3.6.2014, the I.O. recorded statement of one Suresh Ingale, who disclosed that on 2.6.2014, he had been to Gondhalemala. Some boys in the age group of 15 to 20 had assembled. He was knowing 7 boys. 8 – 10 motorcycles were parked nearby. He had seen the boys armed with hockey sticks, wooden logs, etc. He, therefore, went to the spot out of curiosity. At that time, he heard the discussion that the image of Shivaji

Maharaj had been defaced/ tarnished / maligned / marred on the Facebook and that they suspected that the said act was initiated and propagated by Muslims. That the President of Hindu Rashtra Sena had directed his followers to assault Muslims at site so that they can create terror in Hadapsar area. That they were directed to cause damage to the properties belonging to Muslims and not to allow them to conduct any business. The said witness had requested the said boys not to disturb peace and harmony in the society. They threatened him of dire consequences. He therefore got scared and left the spot. Similar statement is of Saddam Gafoor Pathan on 4.6.2014. He has given the names of the persons who were discussing the said issue. They are all accused in Crime No.305 of 2014. In the course of investigation, on 3.6.2014, at the time of conducting the spot panchnama, the police had seized two Passion Motorcycles and one Pulsar motorcycle on which the words were inscribed on the numberplate as **“Hindu Rashtra Sena”**. On the headlight the words **“Shrimant Yogi”** was inscribed along with the sticker of Shivaji Maharaj. The police had therefore, drawn an inference that the miscreants belong to Hindu Rashtra Sena Party. The present applicant happens to be the President of Hindu Rashtra Sena.

5. Perused the papers of investigation. It appears that on 9.1.2014, the present applicant had sought permission from Hindu Rashtra Sena to hold a

public meeting at Manjri. The party had also displayed the banners regarding the said scheduled meeting held on 19.1.2014.

6. By a letter dated 17.1.2014, the Senior P.I. of Hadapsar Police Station had refused permission for holding the public meeting. The police had informed the applicant that it is a known fact that in such public meetings, the present applicant makes ferocious remarks against Muslim religion and creates disruption of social feelings.

7. On 18.1.2014, the Addl. Commissioner of Pune Municipal Corporation had requested the Hindu Rashtra Sena to withdraw their hoardings, boards and banners as they had been displayed without proper permission. On 19.1.2014, the police had arranged a Special Bandobust as a preventive measure. In fact, the police had passed an order under Section 37(1)(3) of the Bombay Police Act and had pressed into force Section 37(1)(3) of the B.P. Act from 12.1.2014 to 25.1.2014. On 19.1.2014, despite the fact that the permission was rejected, Hindu Rashtra Sena held a public meeting and the present applicant had delivered speech by which he had incited feelings of hatred in the minds of Hindus against Muslims. The language was not only ferocious but the applicant had made an unconstitutional speech. The transcript of the said speech is part of

the compilation of the charge-sheet. The people were urged to wage a war against Muslims on religious grounds. An attempt was being made to create imbalance in the social harmony of the society.

8. The statement of Amin Shaikh recorded on 3.6.2014 would show that he was also being chased by some people. He was scared. While chasing him, the persons who were chasing were raising slogans "Dhananjay Zindabad", Hindu Rashtra Sena Zindabad". The people were shutting down their shops. The said witness had to take shelter in a shop. The miscreants followed him in the shop and assaulted him. They wanted to assault him on the head, but they missed the strike and the blow fell on his shoulder heavily. He thereafter pretended to have fallen unconscious. The miscreants presumed that he had succumbed and had fled. He has given the description of the said persons who chased him. The statement of Sanjay Patil would show that the miscreants had abandoned their motorcycle on the spot on which it was inscribed as Hindu Rashtra Sena.

9. The learned Senior Counsel appearing for the applicant submits that the incident is admitted. However, it is a matter of record that the present applicant was not a part of the said group which assaulted the deceased or others or had created a law and order situation. The learned Senior Counsel submits that

the applicant is only being prosecuted with the aid of Section 120-B of IPC and, therefore, he deserves to be enlarged on bail. At this stage, it is necessary to refer to the definition of “criminal conspiracy” which reads thus :-

*“120A. Definition of criminal conspiracy – When two or more persons agree to do, or cause to be done -
(1) an illegal act, or
(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:”*

The proviso to Section 120A reads thus :-

“Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.”

10. The gist of the offence under Section 120-A is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy. It may comprise the commission of a number of acts. It is true that the applicant was not a member of unlawful assembly which attacked / killed Mohsin and injured others but then gist of the offence of conspiracy lies not in doing the act but in the forming of the scheme or agreement between the parties. Conspiracy is a matter of inference by circumstantial evidence. In the present case, there is more than sufficient circumstantial evidence to hold that there is conspiracy.

11. At the trial the applicant may be alternatively charged under Section 107 of IPC and at that stage, the Court may not feel it necessary to convict the applicant under Section 120-B of IPC. But that would depend upon the evidence adduced by the prosecution. Whether an overt act was committed or not is immaterial. It is not necessary that all the conspirators should have joined in the single overt act or in every one of several acts.

12. The transcript of the speech delivered by the present applicant is sufficient to show that he had incited feelings of religious discrimination. The contents of the speech were such that he had influenced the tender minds of the teenagers and youngsters, and had in fact instigated them to eliminate or cause such harm to the members of the Muslim community with an intention that they would stand eliminated or that their peaceful survival would be endangered. It is, therefore, submitted that the present applicant is the principal conspirator.

13. The learned APP rightly submits that most of the accused are in the age group of 18 – 26. Shubham Kamte is 18 years old. The learned APP rightly submits that the applicant herein has taken advantage of the poverty and unemployment in the society and has instigated such people to satisfy his religious fanatic vendetta against Muslim community. In spite of the fact that

there was no permission to hold the public meetings, the applicant herein has held the public meeting and has created violent disharmony in the society. The very fact that the motorcycles which were abandoned on the spot were depicting that they belong to the members of the group, party of which the present applicant is the President, is sufficient to hold that the whole incident had occurred at the instance of, and as a part of the plan of the present applicant. The applicant had given inflammatory speeches at the stage. Statement of the witness showing that a plan had been hatched to attack the members of Muslim community as directed by the present applicant is sufficient to deny bail to the present applicant.

14. One of the witness has categorically stated that he belongs to Muslim community, but when he was apprehended, he had to disclose that he is a Hindu and only then he could save his life. This statement is more than sufficient to hold that the entire incident had occurred due to the unconstitutional speech delivered by the present applicant. In the abovementioned facts and circumstances, people like the applicant, who claim to lead a particular religious group, only to overawe the other religious community and create disharmony in the society, create law and order situation by taking undue advantage of the religious feelings and implementing their plan into action by a young group is more than sufficient to deny bail. At this stage, it is not necessary even to consider as to whether the presence of the applicant at the scene of offence is

instrumental or not.

15. Hence, the application seeking bail being sans merits, stands rejected.

16. The Intervention Applications are already disposed of.

(SMT.SADHANA S.JADHAV, J.)